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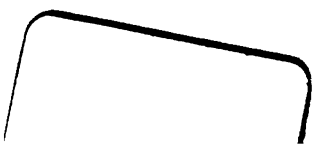
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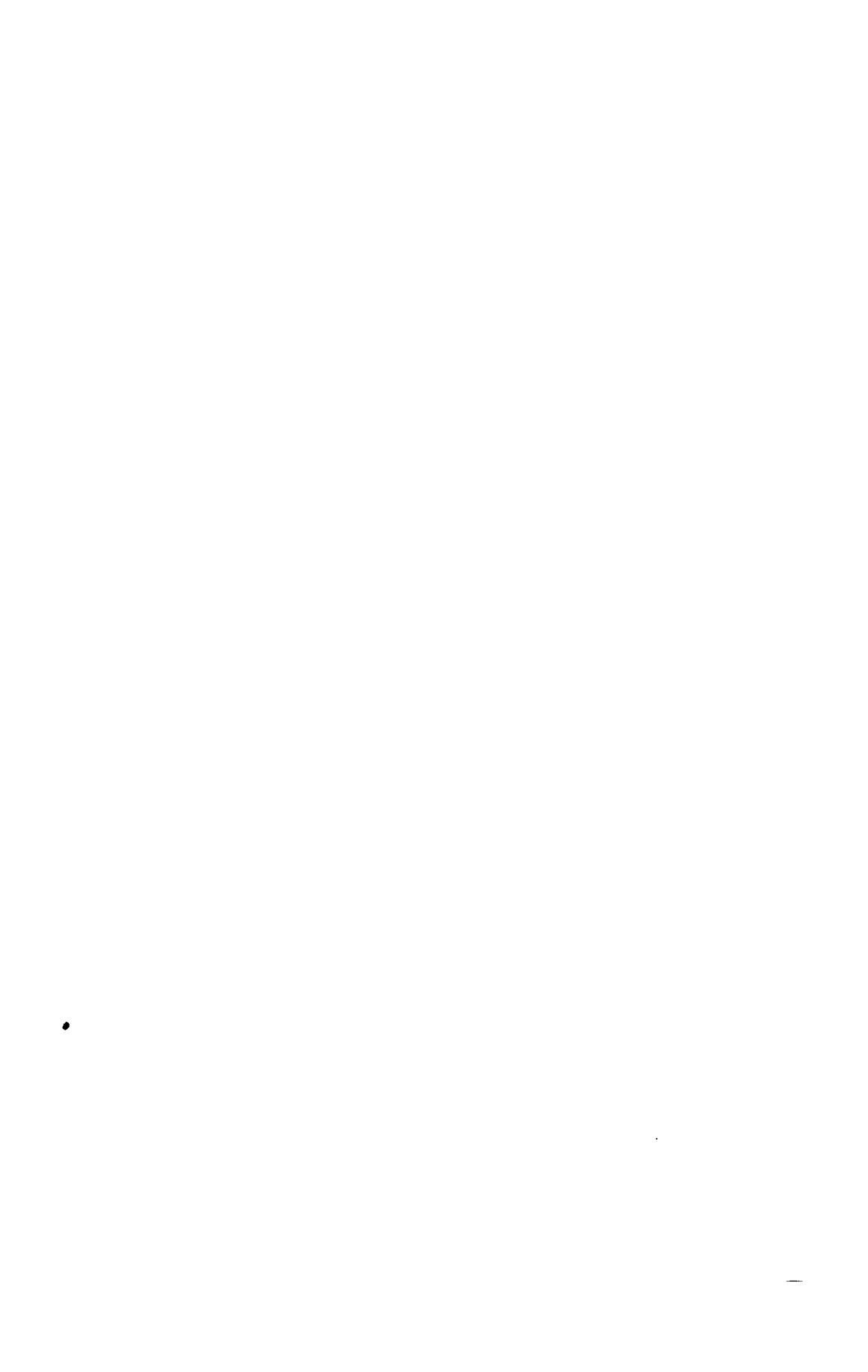
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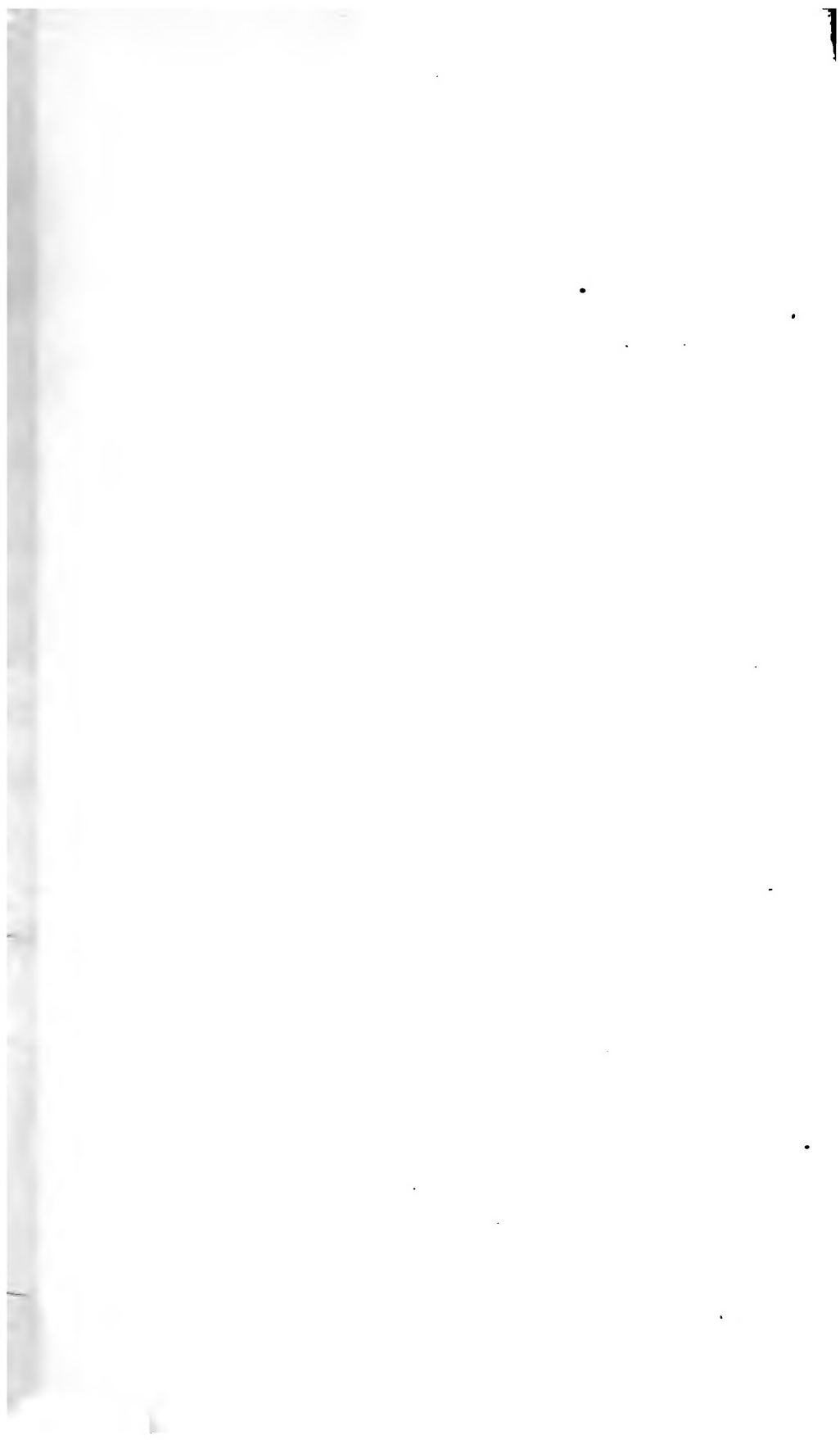
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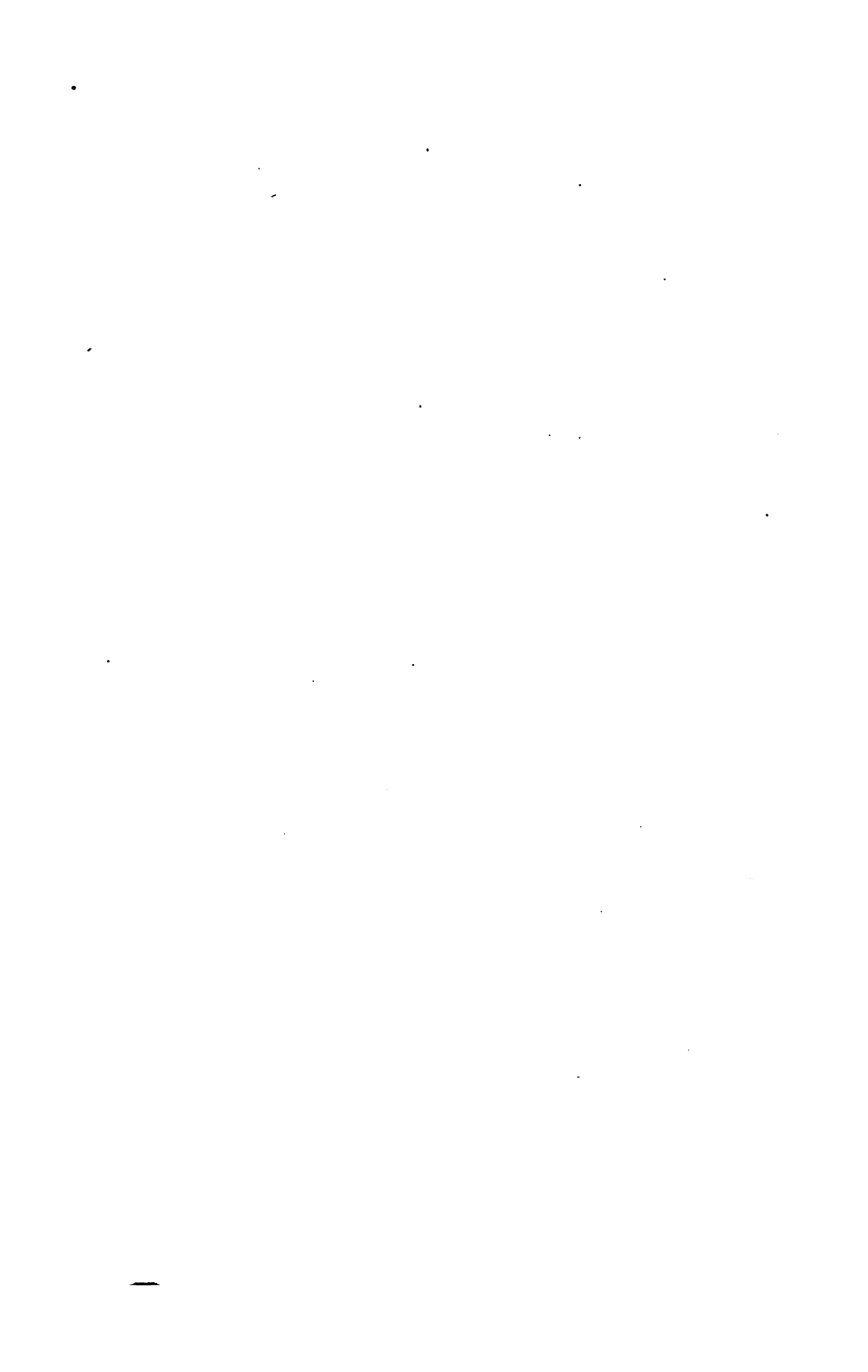


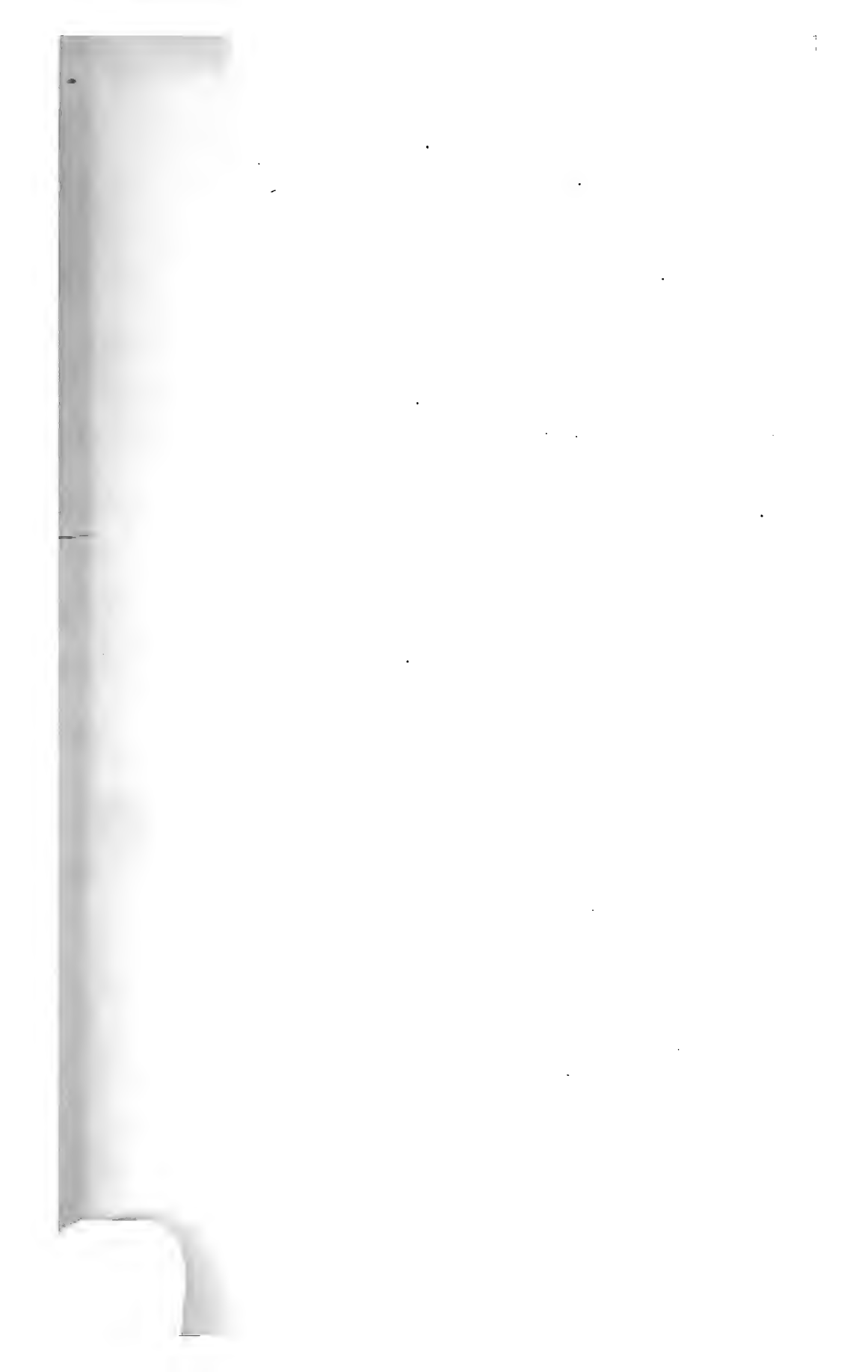


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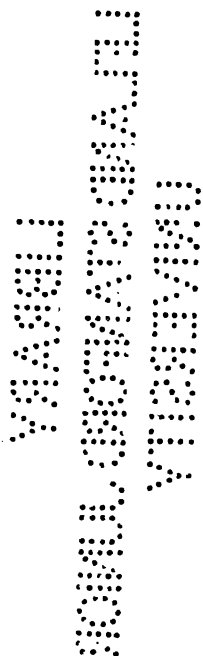






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PREFACE.

THE great and growing practical importance of the law of Foreign Corporations, rather than any intrinsic difficulty in the subject, must be the excuse for this treatise. At this time, when so large a part of the commerce of the country is carried on by foreign corporations, a knowledge of the law and the authorities herein discussed is needed with great frequency; and such a knowledge this book aims to supply.

As part of the general subject, a discussion of the Taxation of Corporations seemed necessary, and that subject could not be treated without an examination of the general principles of taxation, and of the provisions of the Constitution of the United States affecting the right to tax. A considerable part of the book is therefore covered by the title Taxation.

The plan of the book was formed seventeen years ago, as a result of personal knowledge of the uncertainty and timidity found in experienced members of the bar in dealing with foreign corporations. At that time authorities were collected, and considerable progress made upon the text; but in the press of professional duties the author was at that time unable to complete the book. A few years later he again took up the work, and with the assistance of Mr. E. B. Burling, now of the Chicago bar, made further progress; but the work was again suspended.

Believing strongly, however, that a book of the scope of this would be useful to the profession, the author finally determined to complete it. He was fortunate enough to secure the help of Mr. Sanford H. E. Freund, of the Massachusetts

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bar, instructor in the Law School of Boston University. Besides other work on the book, Mr. Freund collected the authorities and made the first draft of chapters VIII and X to XII. Valuable assistance has also been rendered by Mr. A. M. Beale of the Massachusetts bar. Every part of the book has been revised and rewritten by the author more than once, and he has examined and passed upon every statement made and the cases cited by his assistants. For all faults and errors the author is therefore personally responsible.

As is stated in the Introduction, it is the hope of the author that the book may be useful not only to lawyers who need a treatise on the law that governs the rights and obligations of foreign corporations, but also to investors in corporate stock and to business men desiring to form corporations in the best way. Information which will be useful for these purposes will be found tabulated in the Appendix.

It will be noticed that considerable space has been devoted to the statutes of the States and Territories of the United States, and to those of Great Britain and Canada. This is an innovation in American legal treatises which the author felt to be demanded by the nature of the subject. A knowledge of the form of statute on which the decision is based is necessary for an understanding of many important authorities on the law of foreign corporations, and for that reason alone the collection of statutes would be worth while. But the plan of this treatise included the giving of such information about the laws of the several States as might be necessary to show creditors their rights, and investors their interest. For this purpose it was deemed necessary to collect all the statutes bearing on the formation and the taxation of corporations and the liability of stockholders and directors. The statutes have been given, it is hoped, with sufficient fulness to accomplish these objects.

The collection of the statutes has proved to be the most difficult part of the work, and the part in which the author most fears mistake and error. The examination and com-

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parison of many statutes not being usually necessary in legal practice, no such helps have been provided as we find ready for the collection of decided cases. In many States there are comparatively recent revisions of the statutes; but even these have to be supplemented by the later sessions laws. In very few States can one find an adequate index to the statutes. The result is grave danger of omission of a late statutory change. In several States there is an excellent manual of the corporation laws, and in those States the danger of error is much diminished. In most States the corporation laws are officially compiled and published in pamphlet form; these pamphlets have been kindly supplied by the Secretaries of State, and have been of great assistance in those parts of the book covered by them. They have not usually touched the subject of taxation of corporate property. As more experience is gained by legal authors in the use of statutory material such work will be better done; but in spite of the danger of error the collection of statutes herein will, it is hoped, serve its purpose of usefulness to lawyers and business men.

In citing cases, the author has given the reference not only to the official report, but also to the reports of the National Reporter series, to the Lawyer's Cooperative edition of the United States Supreme Court Reports, to the American Decisions, Reports and State Reports, and to the Lawyers' Reports Annotated. The wide use of these unofficial series makes this course not merely desirable, but almost necessary. But in order not unduly to increase the bulk of the notes by this course, a brief form of citation has been adopted. In the National Reporter series the citation omits "Rep.," sometimes appended in citations to the title of the reporter. The American Decisions, Reports and State Reports are cited as A. D., A. R., and A. S. R., respectively, and the Lawyers' Reports Annotated as L. R. A.

Portions of the work have been published in advance, during the past year, in law magazines: the chapter on the En-

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forcement Abroad of the Stockholders' Liability in the Green Bag, the chapter on Two-State Corporations in the Columbia Law Review, and portions of the Title Taxation in the Harvard Law Review. The latter article has been entirely rewritten and greatly expanded; the first two have been merely revised, and are here printed by permission in substantially their original form.

J. H. B.

Cambridge, November 1, 1904.

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THE LAW
OF
FOREIGN CORPORATIONS
AND
TAXATION OF CORPORATIONS

TITLE I.

OF THE FORMATION AND POWERS OF CORPORATIONS.

INTRODUCTION.

A corporation, according to the theory of our law, must be located somewhere within the country which creates it. So strictly was this theory once held in England that it was thought essential that a corporation should be named as of some place in England;¹ and such corporations were created as "The Hospital of St. Lazarus of Jerusalem in England" and "The Prior and Brothers of St. Mary of Mt. Carmel in England,"² the allegation that the place was in England not being issuable.³ Even after corporations began to be formed for trading purposes, they were still located in England.⁴

¹ *Button v. Wightman*, Cro. Eliz. 338.

² 2 Harv. Law Rev. 115.

³ 1 Rol. Abr. 512.

⁴ The Muscovy and East India companies were simply aggregations of London merchants. The company "for the planting, ruling, ordering, and

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Where a corporation was created by patent or charter there seems formerly to have been an especial importance attached to the patent itself; as indeed one might expect to find where so much weight was given to mere form. The place of the corporation and the place where the patent was kept were naturally the same; indeed, it was often necessary to have the patent at hand. So late as 1724 it was said by counsel *arguendo* (and apparently acquiesced in by all parties) that "when private corporations sue, they must produce their charter or grant by which they are constituted, and show to the court that they have a name and a capacity to sue."⁵ Whether there was a legal necessity to have the patent at hand whenever an act was to be done by the corporation it may be impossible to say. There seems at any rate to have been a general belief that the power of the corporation to act, if not its very existence, was bound up in its charter.⁶

governing of New England, in America" was established "in our town of Plymouth, in the county of Devon." Plymouth Colony Laws, p. 4. This company granted William Bradford and his associates, who had then been actually settled in Plymouth for seven years, the right "at all tymes hereafter to incorporate by some usual or fitt name and title." Ibid. p. 25. The Massachusetts Bay charter incorporated the members by the name of "The Governor and Company of the Mattachusetts Bay in New England." Ancient Charters & Laws of Mass. Bay, p. 8. It seems however not to have been contemplated that the corporation should exist elsewhere than in England, though no place was expressly named in the charter. Thus, for instance, it was provided (p. 9) that the General Courts should "make laws and ordinances for the good and welfare of the said company, and for the government and ordering of the said lands and plantation, and the people inhabiting and to inhabit the same," thus making a distinction between the government of the company and of the lands to be settled which would have been useless if a corporation settled in the colony were contemplated. A trading company was in mind, like the East India company, with the additional feature of a colony planted by but not itself constituting the company.

The charter of the colony of Bermuda incorporated "The Governor and Company of the city of London for the plantation of the Somer Islands." 1 Hutch. Hist. Mass. 336.

⁵ Dutch West India Co. v. Van Moses, 1 Strange, 612.

⁶ Thus when it was decided to transfer the government of the Massachusetts Bay colony to New England the patent went too. "Mr. Deputy

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It is not necessary to press this notion too far, to prove that a body incorporated by a foreign government could have had no standing in England. It was well on in the seventeenth century before the common-law courts would allow any fact to be proved which took place outside the realm; such for instance, as the fact of incorporation abroad. A foreign incorporation, therefore, could at this time afford no protection to the members of it. It was only in 1730 that it was finally held that a foreign corporation could sue in England.⁷ Even there, the cause of action did not arise out of a transaction by the corporation in England; the obligation arose abroad, and the only difficulty consisted in proving the incorporation. "Upon the trial," the reporter says, "Lord Chancellor King told me he made the plaintiffs give in evidence the proper instruments whereby by the law of Holland they were effectually created a corporation there."⁸ Up to very late times there is no trace of a foreign corporation doing active business in England; and foreign corporations are almost unnoticed in the English treatises on the law of corporations.

In the United States very few corporations existed before the beginning of the last century. There were, however, a few corporations, for banking, insurance and manufacturing purposes;⁹ and no doubt one or two English companies

put it to the question as followeth: As many of you as desire to have the patent and the government of the plantation to be transferred to New England, so as it may be done legally, hold up your hands. So many as will not, hold up your hands. Where by erection of hands it appeared by the general consent of the Company, that the government and patent should be settled in New England." 1 Mass. Col. Rec. 51.

This notion of the peculiar virtue of the patent appears also in the well-known incident of hiding the Connecticut charter in the Charter Oak.

See Washburn's Judicial History of Massachusetts, p. 14, *note*, where much the same observation is made.

⁷ *Dutch West India Co. v. Van Moses*, 1 Strange, 612; in error, *Henriques v. Dutch West India Co.*, 2 Ld. Raym. 1532.

⁸ 2 Ld. Raym. 1535.

⁹ Williston on History of the Law of Business Corporations, 2 Harv. Law Rev. 165.

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were doing business here. The number increased steadily and rapidly from the beginning of the century; and as many corporations extended their operations into the neighboring States, questions as to the legal standing of corporations outside the charter State became of great importance.

These corporations were almost all created to do business in the incorporating State, but were able to extend their business beyond the borders of the State. The practice of creating corporations intended to act only, or chiefly, in foreign States was probably not yet dreamed of. There were, to be sure, corporations like the East India Company, formed to trade in foreign parts; but the headquarters of the trade was really in England. Such a corporation must, however, have made the transition a natural one to the association so common to-day, which is formed under the laws of one country for the sole purpose of acting in another.

The earliest form of foreign corporation in this sense was no doubt an association of citizens of the incorporating State who intended to carry on business elsewhere. This sort of association seems to be more common in England than in this country; and naturally so, since much English capital is invested in foreign countries. Examples of this sort of corporation are the Calcutta Jute Mills and the Casena Sulphur Company, associations of English capitalists for the purpose of manufacturing in India and of mining in Italy.¹⁰

Another sort of association is that of capitalists from several States who wish to form a corporation with large general powers, able to do business in many parts of the Union. Such an association is the National Waterworks Company,¹¹ the United States Steel Company, the Standard Oil Company, and such great companies. In this case some State must be chosen as the State to issue a charter; and the associates would be likely to be influenced, in choosing the State, by the favorable nature of the charter that could be obtained from a

¹⁰ *Casena Sulphur Co. v. Nicholson*, 1 Ex. D. 428.

¹¹ *Baughman v. National Waterworks Co.*, 46 Fed. 4.

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particular State. Pennsylvania has chartered one or two corporations of very broad powers, which have called for consideration from the courts. One was the "National Land Improvement Company of El Paso County, Colorado," with power to buy and sell land, construct buildings, manufacture, trade, colonize, "operate mineral and other lands and improve and work the same, provided such lands be located in Utah, Arizona, or adjoining States and Territories lying west of the Mississippi; and to do such acts as should be necessary to promote the success of the corporation and the public good."¹² Another, of a little narrower powers, was chartered as "The New York and California Vineyard Company," with power to change the name; and in exercise of the power, the name was changed to the "Land Grant Railway and Trust Company." The corporation was allowed to act anywhere in the United States, except in Pennsylvania.¹³

A third sort of association, today very common, is formed by persons who wish to do business as a corporation in their own State, but prefer the powers or the protection from liability given to corporations in another State, and, therefore, obtain their charter from that other State. An instance of such a corporation was a corporation formed in West Virginia to carry on a toboggan slide in New York.¹⁴

The number of such corporations now in existence, the magnitude of the business done by them, and the difficulty of some of the legal questions to which their acts give rise, give to the subject of the law of foreign corporations an importance which a few years ago it did not have, and make it worthy of careful special treatment.

But in order thoroughly to understand the law of foreign corporations it is necessary also to have in mind certain portions of the general corporation law of each State in which corporations that form the subject of our enquiry may have

¹² *Cowell v. Springs Co.*, 100 U. S. 55, 25 L. ed. 547.

¹³ *Land Grant Ry. v. Coffey County*, 6 Kan. 245.

¹⁴ *Demarest v. Flack*, 128 N. Y. 205, 28 N. E. 645, 13 L. R. A. 854.

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been created. It will be desirable at some length to examine the method of formation of corporations in the various States of the Union, in Canada, and in England; to study their powers, and the liability of their stockholders and officers, to investigate the ways in which they are taxed, and the causes for dissolution. This will involve a study of the statute law of the jurisdictions in question, with some investigation of the interpretation which has been put upon the statutes by the decisions of the courts. And since the rights and obligations of corporations in foreign States have been greatly affected by legislation, it will be necessary to state the law of foreign corporations not merely as a branch of the common law, but also in the light of the statutes of fifty jurisdictions.

The statutes have been examined to the end of the year 1903 (in a few States, 1904): It has been deemed best to bring the examination of decided cases down to the publication of some regular digest. In the United States the cases have been examined through the *Am. Digest* for 1904 (June, 1904); in England and the Colonies, through the *Annual Digests* for 1903.

CHAPTER I

THE NATURE AND CREATION OF CORPORATIONS.

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| § 1. The nature of a corporation. | § 6. The proof of powers. |
| 2. The creation of a corporation. | 7. Corporate action. |
| 3. The powers of a corporation. | 8. Power of the State of charter over the corporation. |
| 4. The extent of powers conferred. | |
| 5. The limitation of powers conferred. | |

§ 1. The nature of a corporation.

A corporation is an artificial person, created by law as an entity independent of the natural person or persons composing it, and endowed by the law that creates it with the power of acting as such independent person. "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being a mere creature of the law, it possesses only those properties which the charters of its creation confers upon it, either expressly, or as incidental to its very existence."¹ The difference between a corporation and a partnership is that while the partnership is created by act of the partners and derives its powers from their association, the corporation is dependent for its existence and powers entirely upon the law. "Without ascribing to this body, which in its corporate capacity is the mere creature of the act to which it owes its existence, all the qualities and disabilities annexed by the common law to ancient institutions of this sort, it may correctly be said to be precisely what the incorporating act has made it; to derive all its powers from that act, and to be capable of exerting its faculties only in the manner which that act au-

¹ Marshall, C. J., in *Dartmouth College v. Woodward*, 4 Wheat. 518, 636.

thorizes. To this source of its being, then, we must recur to ascertain its powers." ²

§ 2. The creation of a corporation.

A corporation was once created by the King's patent or charter; in modern times, however, all corporations are created either by direct act of the legislature or by authority of some statute. The legislature may act directly by voting a charter of incorporation; this is always within the bounds of legislative power unless restrained by some provision of the Constitution. In most States, however, the granting of charters of incorporation by special act of the legislature is forbidden by the Constitution.³ The only States in which a corporation

² Marshall, C. J., in *Head v. Providence Ins. Co.*, 2 Cranch. 127.

³ Ala. Const. (1902) Art. 12, § 229; Ark. Const. (1874) Art. 12, § 2 ("except for charitable, educational, penal or reformatory purposes, where the corporations created are to be and remain under the patronage and control of the State"); Cal. Const. (1879) Art. 12, § 1; Col. Const. (1876) Art. 15, § 2 ("except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the State"); Del. Const. (1897) Art. 9, § 1 (excepting "municipal corporations, banks, or corporations for charitable, penal, reformatory, or educational purposes, sustained in whole or in part by the State"); Fla. Const. (1887) Art. 3, § 25 ("the legislature shall provide by general law for incorporating such . . . associations as may be deemed necessary"); Ga. Const. (1877) Art. 3, § 7, cl. 18 (except banking, insurance, railroad, canal, navigation, express and telegraph companies); Ida. Const. (1889) Art. 3, § 19, cl. 31; Ill. Const. (1870) Art. 11, § 1 (with the same exception as in Arkansas); Ind. Const. (1851) § 212 (except banking corporations); Ia. Const. (1857) Art. 8, § 1; Kan. Const. (1859) Art. 12, § 1; La. Const. (1898) Art. 48 (except municipal corporations); Me. Const. (1818) Art. 4, § 14 ("except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained"); Md. Const. (1867) § 48 ("except for municipal purposes, and except in cases where no general laws exist providing for the creation of corporations of the same general character as the corporation proposed to be created"); Mich. Const. (1850) Art. 15, § 1 (except for municipal purposes); Minn. Const. (1858) Art. 4, § 33, cl. 7 (except to cities); Miss. Const. (1890) § 178; Mo. Const. (1875) Art. 4, § 53; Mont. Const. (1889) Art. 15, § 2 (same exception as in Colorado); Neb. Const. (1875) Art. 13, § 1 (same exception as in Arkansas); Nev. Const. (1864) Art. 8, § 1 (except for municipal purposes); N. J. Const. (1844) Art. 4, § 7, cl. 11; N. Y. Const. (1894) Art. 8, § 1 ("except for municipal purposes, and in

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may now generally be created by special charter are the New England States (except Maine) and Kentucky; in cases where the objects of the corporation cannot be attained under general laws, in Maine, Maryland, New York, North Carolina, Wisconsin, and Wyoming; and by a two-thirds vote of each branch of the legislature in South Carolina.

In every State and organized Territory, in all the Provinces of Canada, and in Great Britain there are general laws under which a corporation (in Great Britain and the Dominion of Canada a joint stock company, which is regarded in this country as a corporation⁴) may be formed by complying with the conditions prescribed. In most States the incorporators sign articles and file them with a State officer; in a few States they are filed with a court⁵ or with a local official.⁶ The details of the State laws on this subject will be found in the succeeding chapter.

In Rhode Island no corporation with power to exercise

cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws"); N. Car. Const. (1868) Art. 8, § 1 (same exceptions as in New York); N. Dak. Const. (1890) Art. 7, § 131 (same exception as in Colorado); Ohio Const. (1851) Art. 13, § 1; Or. Const. (1857) Art. 11, § 2 (except for municipal purposes); Pa. Const. (1875) Art. 3, § 7; S. Car. Const. (1895) Art. 9, § 2 (same exception as in Arkansas; "provided that the general assembly may by a two-thirds vote of each house on a concurrent resolution allow a bill for a special charter to be introduced, and when so introduced may pass the same as other bills"); S. Dak. Const. (1890) Art. 17, § 1 (same exception as in Arkansas); Tenn. Const. (1870) Art. 11, § 8; Tex. Const. (1875) Art. 12, § 1; Utah Const. (1895) Art. 12, § 1; Va. Const. (1902) Art. 4, § 63, cl. 17; Wash. Const. (1889) Art. 12, § 1; W. Va. Const. (1872) Art. 11, § 1; Wis. Const. (1848) Art. 11, § 1 (same exceptions as in New York); Wy. Const. (1889) Art. 3, § 27, and Art. 10, § 1 (the legislature shall not pass a special law for chartering banks, insurance and loan and trust companies; "in all other cases where a general law can be made applicable no special law shall be enacted;" "the legislature shall provide for the organization of corporations by general law").

⁴ *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 566, 19 L. ed. 1029; *Edgeworth v. Wood*, 58 N. J. L. 463, 33 Atl. 940.

⁵ Alabama, Georgia, Maryland, Virginia.

⁶ District of Columbia.

the right of eminent domain or to acquire a franchise in a highway is allowed to be formed except by special act.⁷ This is an unusual limitation on the power of the legislature to enact general laws for creating corporations.

§ 3. The powers of a corporation.

Since the corporation is a creature of law, and exists as a legal person only so far as the law permits, its capacities and powers are determined by the law which created it. To that law therefore we must go to learn its powers; and when any question arises as to corporate power, it must be determined as the courts of the incorporating State would determine it.⁸ "As it was an artificial being, created only by the laws of Indiana, and by them alone endowed with whatever powers and capacities it possesses, it could have no capacities nor exercise any powers anywhere, which were not, expressly or by implication, given by those laws; or, in other words, no powers or capacities which would not be recognized and sustained by the courts of that State had the same question of capacity to take those lands come before them for adjudication."⁹

Since this determination of the powers of a corporation is inherent in the very nature of the corporation, its powers cannot be altered by any other State. While the law of another State may permit or forbid the exercise of corporate powers, it cannot increase or diminish the powers themselves, or in any way affect their existence. Thus where a railroad was chartered by the State of Indiana without power to lease another railroad, an act of the Illinois legislature authorizing it to lease a railroad in the latter State could not

⁷ R. I. Const. (1899) Art. 4, § 15.

⁸ *Brown v. Phillippe*, 16 Ia. 210; *Thompson v. Waters*, 25 Mich. 214, 12 A. R. 243; *Lamb v. Russell*, 81 Miss. 382, 32 So. 916; *Black v. Delaware & R. C. Co.*, 22 N. J. Eq. 130, 422; *O'Brien v. Chicago R. I. & P. R. R.*, 53 Barb. 568. But see *Milnor v. New York & N. H. R. R.*, 53 N. Y. 363, 367.

⁹ *Christiancy, J.*, in *Thompson v. Waters*, *supra*.

confer upon it the power to do so, and a lease attempted to be made in accordance with the Illinois statute would be void.¹⁰ And a railroad chartered by Kentucky with power merely to operate a railroad could not accept a warehouseman's lease in Louisiana, whatever the law of the latter State.¹¹ So a telegraph company chartered to maintain telegraph lines only in certain named counties of a State may not enter another State and appropriate property, though permitted to do so by the latter State.¹² It follows from this general principle that a corporation which by its charter is allowed to act only in its own State cannot anywhere maintain a suit based on action outside its State.¹³

A national bank is of course subject to this rule and can do only what the act of Congress empowers it to do, no matter what the law of the State in which it is located may be.¹⁴

§ 4. The extent of powers conferred.

Powers may be conferred upon a corporation either expressly or by implication. The charter or articles of incorporation enumerate certain powers which the corporation is to have. The statutes of the State of incorporation are likely to name other powers. It is often permitted a corporation by amendment of its articles of incorporation or its by-laws to extend or alter its powers. In these ways express powers may be conferred. The laws of the various States upon this matter will be found collected in the next Chapter.

But in addition to the powers expressly enumerated, every corporation has certain implied powers, conferred by the common law. Thus for instance the power by vote of the

¹⁰ *St. Louis, V. & T. H. R. R. v. Terre Haute & I. R. R.*, 145 U. S. 393, 36 L. ed. 748.

¹¹ *State v. Southern Pac. Co.*, 52 La. Ann. 1822, 28 So. 372.

¹² *Southwestern Tel. Co. v. Kansas City S. & G. Ry.*, 108 La. 691, 32 So. 953.

¹³ *Baltimore & O. Tel. Co. v. Del. & A. Tel. & Teleph. Co.*, 7 *Houst.* 269.

¹⁴ *Weckler v. First Nat. Bank*, 42 Md. 581, 20 A. R. 95; *Matthews v. Skinker*, 62 Mo. 329, 21 A. R. 425; *Fowler v. Scully*, 72 Pa. 456, 13 A. R. 609.

corporation to create an agent would seem to be inherent in the very nature of a corporation. And so it has been well held that the power of a corporation to act outside the State of incorporation is inherent in the nature of a corporation, and no express power to do so need be shown.¹⁵ So a power to make by-laws is inherent in a corporation, "included, by law, in the very act of incorporating, as is also the power to sue, to purchase, and the like. For as reason is given to the natural body for the governing of it, so the body corporate must have laws as a politic reason to govern it . . . and therefore, though there be no proviso for that purpose the law supplies it."¹⁶

§ 5. The Limitation of powers conferred.

Powers of a corporation may be limited by the express language of the charter or by implication from the language of the charter or of the statutes of the incorporating State. In the first case there is no difficulty; as the power of the corporation is derived from the charter, so any express limitation in the charter must lessen the power. It may, however, be difficult to decide whether a prohibition in a charter is a limitation of power or a prohibition of the exercise of a granted power. If the former is the case, there is no power given, and therefore as has been seen the corporation cannot obtain the power anywhere. If, however, the prohibition is upon the exercise of the power, the prohibition ceases when the law ceases, that is, outside the territory of the charter State, and the power may perhaps be exercised abroad.¹⁷

This distinction was taken in the leading case of *Hitchcock v. United States Bank*.¹⁸ The charter given by Pennsylv-

¹⁵ *Dodge v. Council Bluffs*, 57 Ia. 560. But see *Matthews v. Trustees*, 2 Brewst. 541.

¹⁶ *Norris v. Staps*, Hob. 210b.

¹⁷ *Ohio Life Ins. & Tr. Co. v. Merchants' Ins. & Tr. Co.*, 11 Humph. 1, 24, 53 A. D. 742.

¹⁸ 7 Ala. 386.

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vania to the Bank of the United States provided that it should be restricted to six per cent. interest on its loans. A loan made by it in Alabama at eight per cent., legal there, was held valid, on the ground that the rate of interest on a loan was not a matter which concerned the legality of the loan, or the power to make it, but was "a mere incident of the power." So a sale of lands in New York by an Illinois corporation at a price forbidden by charter is not illegal, although a statute of Illinois had declared that all such sales should be illegal.¹⁹ So it has been held that a provision in the charter of a corporation against parol contracts has no effect in a State where there is no objection to such contracts.²⁰ Nothing but the most positive and explicit expressions in the charter or in a statute could justify the belief that the legislature of the charter State intended to prohibit one of its own corporations from employing its capital in other States on terms less favorable than the laws of such other States allowed as just.²¹

But this question is one of interpretation merely; if the proper interpretation of the charter finds a limitation of power, there is no room for further argument. The question is a somewhat different one when the alleged limitation of power arises from the general legislation of the State of incorporation, not from a provision in a charter or in the corporation law of the State.²² A typical case of the sort is presented by a statute of New York which forbids corporations to take land by devise unless expressly authorized by their charters. A New York corporation, not expressly au-

¹⁹ *Ellsworth v. St. Louis, A. & T. H. R. R.*, 98 N. Y. 553.

²⁰ *New England F. & M. Ins. Co. v. Robinson*, 25 Ind. 536.

²¹ *United States Mtg. Co. v. Sperry*, 24 Fed. 838. See to the same effect *Phila. Loan Co. v. Towner*, 13 Conn. 249; *Frazier v. Willcox*, 4 Rob. (La.) 517; *Erwin v. Lowry*, 6 Rob. (La.) 28; *Depau v. Humphreys*, 20 Mart. (La.) 1; *Knox v. Bank of U. S.*, 26 Miss. 655; *Bank of Louisville v. Young*, 37 Mo. 398; *Bard v. Poole*, 12 N. Y. 495; *Larwell v. Hanover Sav. F. Soc.*, 40 Oh. St. 274; *Bullard v. Thompson*, 35 Tex. 313. See however *contra*, *Scammon v. U. S. Mortgage Co.*, 17 Chic. Legal News, 234.

²² *Hoyt v. Shelden*, 3 Bosw. 267, 299.

thorized by charter, received a devise of land in Connecticut. The Supreme Court of Connecticut held the devise valid.²³ The court said: "It is not expressly authorized to take by devise, nor is it prohibited from so taking. Can it then take by devise? Not in New York, as we have seen. Therefore not in Connecticut, say the counsel for the heirs at law, for being a New York corporation, and by the law of that State devoid of power to take by devise, no argument is needed to show its inability to take by devise in Connecticut. This conclusion is too hastily drawn. If the inability to take by devise arose out of a prohibitory clause in the charter, the conclusion would be legal and logical. But the inability does not so arise. There is no prohibition in the charter; the inability is created by the New York Statute of Wills, expressly excepting corporations from taking by devise. Now this corporation brings with it from New York its charter, but it does not bring with it the New York Statute of Wills and cannot bring it to be recognized as law within this jurisdiction. There is an obvious distinction between an incapacity to take created by the statute of a State, which is local, and a prohibitory clause in the charter, which everywhere cleaves to the corporation. The reasoning is fallacious, not recognizing this distinction. There being no prohibition in the charter, and the power to hold and convey real estate being expressly given, we must look to our own statutes and laws, and not to those of New York, to determine whether or not this corporation can take by devise in Connecticut."²⁴

There can be little doubt that this view is sound. The object of the New York statute was not to prevent corporations from taking land, but to prevent certain devises. New York has no concern with devises of foreign land. In short, it is not a statute passed to affect the powers of New York corporations. And the weight of authority is in accordance

²³ *White v. Howard*, 38 Conn. 342.

²⁴ *Foster, J.*, in *White v. Howard*, *supra*.

with this view.²⁵ On the other hand, it has been held that the prohibition in this act was a fundamental limitation on the power of New York corporations, and prevented them from taking foreign land by devise.²⁶ In Massachusetts the court held that a municipal corporation of New York had no power to take a bequest; but as a bequest to such a corporation was valid in Massachusetts, and was a charitable bequest, it was put into the hands of trustees to be held until New York should empower its corporation to take it.²⁷ The question of the power of a municipal corporation depends of course on different considerations.

In the same way where a statute of the State of charter forbids a general assignment by a corporation, this is not a limitation upon the power of the corporation, and has no extra-territorial effect; such a corporation may make an assignment in any State where such an assignment is permitted.²⁸ So where a statute of the incorporating State forbids the giving of preferences, the execution by the corporation of a judgment note in another State is good;²⁹ so is a mortgage of land to secure a *bona fide* antecedent debt.³⁰ The same is true of a *bona fide* acquisition of part of the assets in a foreign State. Thus where a New Jersey corporation transferred in New York a large part of its property to a creditor, who assigned to the defendant for value, the assignee of the corporation, which had been declared insolvent after the first

²⁵ American Bible Society v. Marshall, 15 Oh. St. 537; Thompson v. Swoope, 24 Pa. 474.

²⁶ Starkweather v. American Bible Society, 72 Ill. 50, 22 A. R. 133; House of Mercy v. Davidson, 90 Tex. 529, 39 S. W. 924.

²⁷ Fellows v. Miner, 119 Mass. 541. See to the same effect Frasier v. St. Luke's Church, 10 Pa. Co. Ct. 53.

²⁸ Warren v. First Nat. Bank, 149 Ill. 9, 38 N. E. 122; Boehme v. Rall, 51 N. J. Eq. 541, 26 Atl. 836; Pairpoint Mfg. Co. v. Phila. Optical & W. Co., 161 Pa. 17, 28 Atl. 1003; Borton v. Brines-Chase Co., 175 Pa. 209, 34 Atl. 597. *Contra*, McQueen v. New, 33 N. Y. S. 802, 87 Hun, 206 (*semble*); Pierce v. Crompton, 13 R. I. 312.

²⁹ East Side Bank v. Columbus Tanning Co., 170 Pa. 1, 32 Atl. 539.

³⁰ Nathan v. Lee, 152 Ind. 232, 52 N. E. 987, 43 L. R. A. 820.

transfer, was not allowed to recover the property, though a New Jersey statute made such a transfer in contemplation of insolvency void. The defendant had acquired a good title, by the law of the place of transfer; and the courts of that State would not allow it to be divested because of a New Jersey statute. It was attempted to impugn the *bona fides* of the defendant on the ground that he had constructive notice of the New Jersey act; but it was held that though one dealing with a corporation might be bound by constructive notice of the provisions of the charter, he could not be bound to know the laws of the incorporating State.³¹ So it was held in New York that a railway corporation chartered by Connecticut could make a contract of carriage to a point beyond its own lines, since domestic railroads could do so, although by the Connecticut law a railway company could make no such contract.³² It has, however, been held that where a statute of Missouri forbids the employee of a railroad being interested in furnishing supplies to a railroad, a railroad corporation of Missouri operating a line of road in Texas has no power to make a contract for supplies with an employee there.³³ As this was a question between the corporation and one of its agents, and the prohibition in question had to do with the internal affairs of the corporation, the Missouri law was rightly applied.

§ 6. The proof of powers.

Where a corporation attempts to enforce a right, the burden is upon it of showing that it has power to do the act; it must prove its charter in order to show its power.³⁴ Thus where a foreign corporation applied for a writ of mandamus to compel

³¹ Hoyt v. Thompson, 19 N. Y. 207; *acc.* Hoyt v. Shelden, 3 Bosw. 267, 298. So also Standard Nat'l Bank v. Garfield Nat'l Bank, 67 N. Y. S. 472, 56 App. Div. 43.

³² Milnor v. New York & N. H. R. R., 53 N. Y. 363.

³³ Rue v. Mo. Pac. Ry., 74 Tex. 474, 8 S. W. 533, 15 A. S. R. 852.

³⁴ Morris v. Hall, 41 Ala. 510, 536 (*semble*); Diamond Match Co. v. Powers, 51 Mich. 145.

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the register of deeds to let it examine the records, it was held that it must at least show that by its charter it had the right to hold lands.³⁵

But it would seem that there are powers and limitations of power so obvious that they will be presumed in the absence of evidence to the contrary, even in a case where the burden is on the plaintiff, representing the rights of the corporation, to establish its powers. Thus where a stockholder in a foreign corporation brought a bill for an injunction to restrain the directors from paying out of the funds of the company the expense of a suit for libel against one of the members of the corporation, the court held that it might be assumed, in the absence of proof to the contrary, that the law of every country which can create a corporation would restrict its right to spend money to the purposes for which it is incorporated; and an English court might therefore say, without proof of the law of Turkey, that a Turkish corporation would have no right to spend its money in the prosecution of one of its members for libel.³⁶ So it has been held that in the absence of proof of the statute law of its domicile, it will be presumed that a corporation has the power to make a general assignment.³⁷ In Massachusetts, however, it has been held that where a foreign corporation charges its treasurer with making certain illegal payments, proof of the law of the charter State must be shown in order to prove the payments illegal, though

³⁵ *Diamond Match Co. v. Powers*, 51 Mich. 145. GRAVES, C. J., said (at p. 147): "We have no means of knowing that it has capacity to buy or hold lands or deal in titles anywhere; or to carry on the business in which its petition alleges it to be engaged; or to apply itself to such an enterprise as making a system of abstracts of all the titles of all the real property in a county. The case is bare of information in regard to the true legal status of the relator, and as to whether it is other than a mere intruder in what it now demands. . . . The authority given to it by the State by which it was created is not disclosed and cannot be assumed."

³⁶ *Pickering v. Stephenson*, L. R. 14 Eq. 322.

³⁷ *Lane v. Wheelright*, 23 N. Y. S. 596, 69 Hun, 180; *McQueen v. New*, 30 N. Y. S. 977 (reversed in 87 Hun, 206, 33 N. Y. S. 802); *Franzen v. Zimmer*, 35 N. Y. S. 612, 90 Hun, 103.

the courts said, "a transaction of this character ought to be forbidden by law."³⁸ These cases do not seem to be consistent; and the English doctrine is evidently preferable. The doctrine of the Massachusetts case is open to the objection that it presumes the foreign law to be different from the domestic law in the absence of proof (contrary to the ordinary rule) in order to accomplish a result which is admittedly unjust.

Where, however, a stranger is suing a foreign corporation upon a right alleged to have been derived from an act of the corporation, the rule is more liberal.³⁹ "If a corporation created by the laws of another State whose existence and legal organization are not disputed, is found making contracts within this State through agents which it employs, and a suit is brought in such a manner that the corporation is made amenable to the jurisdiction of our courts, in our opinion it is not necessary for the plaintiff who seeks to enforce the contract to furnish in the outset any other evidence of the capacity of the corporation to make the contract."⁴⁰

§ 7. Corporate action.

The corporation may act either by itself or through agents; but in the latter case the corporation must by itself appoint at least its principal agents. The whole activity of a corporation must therefore have its origin in some personal act. And here two things are to be noticed: first, the act must be that of the corporation, the artificial person, and not the act of some or all of the individual members of the corporation; second, since the personality of the corporation and its power to act are derived from the law which incorporates it, every personal act of the corporation must take place within the jurisdiction of that law; any act done outside the jurisdiction of that law cannot be corporate action, but must be the act of the natural individuals who take part in it.

³⁸ *Sears v. Kings County Elevated Ry.*, 156 Mass. 440, 31 N. E. 490.

³⁹ *Yeaton v. Eagle Oil & R. Co.*, 4 Wash. 183, 29 Pac. 1051.

⁴⁰ *Hoar, J.*, in *McCluer v. Manchester & L. R. R.*, 13 Gray, 124, 74 A. D. 624.

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The corporation as such acts in two ways: through its meetings, and by the use of its corporate seal. But as the authority to affix the seal must be derived from a vote of the corporation, the only ultimate source of corporate action is the corporation meeting. This must take place, therefore, within the State which has granted incorporation. A meeting of members of a corporation outside that State cannot be a meeting of the corporation, since it is outside the jurisdiction of the law which alone makes the corporation a person; the members, even when met together for action, are there a mere collection of individuals.⁴¹ The corporation at a valid meeting having appointed agents (directors or other agents), these agents or their sub-agents may then act for the corporation, as agents may act for a natural person, anywhere; their action is not confined to the State of incorporation. It is through agents alone that a corporation can act in a foreign State.

The corporation in appointing agents and the agents in acting must of course derive their power from the law which created the corporation. Whether it acts by itself or through its agent is immaterial: it cannot confer on an agent the power to do for it what it cannot do for itself. It is equally immaterial where the act in question is to be performed: in order to be an act of the corporation it must be authorized, if at all, in the place where the corporation has power to act, that is, in the State of its charter; and whether it may be authorized there depends on the charter and the law by which that is governed.⁴²

⁴¹ See *infra*, Chap. xiv.

⁴² *Runyan v. Coster*, 14 Pet. 122; *Seattle Gas & El. Co. v. Citizens L. & P. Co.*, 123 Fed. 588; *New York F. Ins. Co. v. Ely*, 5 Conn. 560, 13 A. D. 100; *Duke v. Taylor*, 37 Fla. 64, 19 So. 172, 53 A. S. R. 232, 31 L. R. A. 448; *Metropolitan Bank v. Godfrey*, 23 Ill. 579; *State v. Southern Pac. Co.*, 52 La. Ann. 1822, 28 So. 372; *Black v. Delaware & R. Canal Co.*, 22 N. J. Eq. 130, 422; *National Trust Co. v. Miller*, 33 N. J. Eq. 155; *Bard v. Poole*, 12 N. Y. 495 (but see *Griess v. Mass. Ben. Assoc.*, 60 Hun, 581, 15 N. Y. S. 71); *Ohio L. Ins. & Tr. Co. v. Merchants' Ins. & Tr. Co.*, 11 Humph. 1, 53 A. D. 742; *Rue v. Missouri Pac. Ry.*, 74 Tex. 474, 8 S. W. 533, 15 A. S. R. 852; *Rio Grande W. Ry. v. Telluride Power Tr. Co.*, 23 Utah, 22, 63 Pac. 995.

§ 8. Power of the State of charter over the corporation.

A corporation is subject, as to the continuance of its rights and powers, to the legislature of the State of its creation, so far as that legislature may constitutionally act; and all persons who deal with the corporation must do so with this fact in mind. This principle is well illustrated by the case of *Canada Southern Railway v. Gebhard*.⁴³ Gebhard was the holder of bonds of the railway company, a corporation chartered in Canada; and he brought suit on them in the courts of New York. The defence offered was that the Dominion Parliament had passed an act authorizing the road to reorganize and substitute other securities for its bonds, and providing that when a majority of the stockholders assented to this it should be deemed to have been accepted by all. There was no constitutional restriction upon the action of the Parliament. The Supreme Court held the defence good. Waite, C. J., said: "The charter of a foreign corporation is the same abroad that it is at home. Whatever legislative control it is subjected to at home, must be recognized and submitted to by those who deal with it elsewhere. Every person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of the government authorizes. Anyone contracting is conclusively presumed to have contracted with a view to such laws of that government because the corporation must of necessity be controlled by them and it has no power to contract with a view to any other laws with which they are not in harmony. It follows, therefore, that anything done at the legal home of the corporation under the authority of such laws, which discharges it from liability there, discharges it everywhere."⁴⁴

The existence of a successor to the corporation is to be

⁴³ 109 U. S. 527, 27 L. ed. 1020.

⁴⁴ See to the same effect, *Rust v. United Waterworks Co.*, 70 Fed. 129.

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determined by the same law. Thus where the laws of the State of charter provide that in case of insolvency of a corporation its assets shall pass to a designated officer of the State for the purpose of winding up the corporation, upon the insolvency being declared by the proper court the assets everywhere pass to the officer named.⁴⁵ "The law which clothed him with the trust was, in legal effect, part of the charter of the corporation. He was the statutory successor of the corporation, for the purpose of winding up its affairs. . . . Every person who deals with it, everywhere, is bound to take notice of the provisions which have been made in its charter for the management and control of its affairs, both in life and after dissolution."⁴⁶

⁴⁵ *Relfe v. Rundle*, 103 U. S. 222, 26 L. ed. 337; *Bookover v. Life Assoc. of Amer.*, 77 Va. 85. To the same effect, *Rust v. United Waterworks Co.*, 70 Fed. 129.

⁴⁶ WAITE, C. J., in *Relfe v. Rundle*, *supra*.

CHAPTER II.

STATE LAWS FOR THE FORMATION OF CORPORATIONS.

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§ 10. Introduction.

The purposes of this chapter are, first, to indicate so much of the duration, powers, and limitations of a corporation as it may be essential for one dealing with the corporation in another State to know; second, to inform persons who con-

template the formation of a corporation abroad, or an investment in the shares of a foreign corporation, of the advantages or disadvantages of incorporation in any particular State.

As has already been seen,¹ the constitutions of most States forbid the formation of corporations by special legislative act. In a few States, however, this may be done; and in case of a corporation so formed the provisions of its special charter may supersede the provisions of the general law, and must be consulted in order to determine the extent of its powers and liabilities.

The matters principally included in this chapter are the provisions regulating the number of incorporators required, and the number (if any) who must be resident; the purposes for which corporations may be formed; the amount of capital stock which must be subscribed or paid in before doing business, if there is any requirement of the sort; the special examination, if any, made by a State officer before issuing the charter; the term for which the corporation may continue in existence; and the enumeration and limitation of its powers. If the State requires a publication of the names of the stockholders, this is also noted. The consideration of the stockholder's liability is postponed to a subsequent chapter; but the provision made in a few States which permits the incorporators in their Articles of Incorporation to fix the amount of the stockholder's liability is here given.

Most States make no requirement of residence for the incorporators. In California, Maryland, and Ohio a majority must be resident; in North Dakota, Oklahoma and South Dakota, one-third; in Kansas, three; in Texas, two; in Idaho, New York, Pennsylvania, and Utah, one; and in Wisconsin, all. In New York two-thirds must be citizens of the United States.

The whole number of incorporators required is usually at least three or five. In Illinois the number is limited to seven.

¹ Ante, § 2.

In Alabama, South Carolina and Washington, it may be two, and in Iowa a single individual may incorporate. In Arizona, Georgia, Hawaii, Mississippi and Nebraska, the number of incorporators is not specified, but the use of the plural form would indicate a requirement of at least two.

In most States a corporation may be formed for any lawful purpose; often excepting from the general provisions banking, insurance, and public service companies, and in a few States manufacturing companies, which are specially dealt with. In Indiana, Maryland, Montana, Oklahoma, Pennsylvania, Tennessee, Texas, and Wisconsin, the specific purposes for which corporations may be formed under the general laws are enumerated. In Indiana special care is taken to prevent a corporation from going beyond the purposes prescribed.

In a majority of States the amount of capital stock and the amount to be paid in before beginning business is either not prescribed at all or is left to be fixed by the articles. In several States, however, this is a matter for elaborate arrangement, the policy of the State requiring the protection of the creditors in this way. States making strict provisions of this sort are Missouri (one-half paid in); Alabama, Florida, Georgia, Michigan, Pennsylvania, South Carolina, Utah, West Virginia (ten per cent. paid in); Connecticut, Delaware and New Jersey (one thousand dollars paid in); New York (five hundred dollars paid in); Texas (one hundred thousand dollars paid in, or fifty per cent. subscribed and ten per cent. paid in). Massachusetts requires all the capital stock to be paid in except in case of business corporations, in respect to which there is no provision.

In most States the Secretary of State issues a certificate of incorporation, as of course, upon a compliance with the prescribed forms. In a few States, however, a State officer or board examines into the affairs of the proposed corporation, to determine whether it complies with the law. In Alabama, Georgia, Maryland, Virginia and Vermont (if the Secretary

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of State is in doubt) the matter is referred to a court or judge; in Florida, Mississippi, and Pennsylvania, to the Governor; in Kansas to a Charter Board; in Massachusetts to a Commissioner of Corporations; while in Mississippi the Attorney General assists the Governor; and in Virginia the charter, if approved by the court, is also passed upon by the Corporation Commission.

In many States the term of existence of a corporation may be fixed by the articles within a statutory limitation; the limitation ranging from twenty to one hundred years. In such States it is obviously regarded as impolitic to organize corporations in perpetuity; and the term appears to be fixed at the limit of business activity (or in a few States of life) of an individual. In other States the term of existence of the corporation may be fixed by the articles, as it seems, without limitation. In a few States, no provision for fixing the term of existence being made by statute, the corporation appears to have a perpetual existence until dissolved by law; these States are Arkansas, Maine, Massachusetts, Nebraska, New Hampshire, Ohio (except corporations to deal in real estate), Rhode Island, South Carolina, Tennessee, Vermont, and Wisconsin.

In several States the corporation is obliged to keep a list of its stockholders, open in a few States to the public, in most to stockholders and creditors, and in one or two perhaps known only to the State officers with whom it is filed; but in all such States, of course, the facts could probably be learned by interested persons. A full consideration of this matter will be found in a later chapter.

In several States the nature of the stockholder's liability must be prescribed in the articles. These States are Arizona, Delaware, Hawaii, Iowa, Kentucky, Nevada, and Utah.

In most States it is provided that amendments to the articles may be made in a prescribed method. The absence of such a provision does not necessarily mean that no amendment can be made.

§ 11. Alabama.

Two or more persons may form a corporation for carrying on any industrial business, or for any lawful enterprise if not otherwise provided by law.² These persons file in the office of the judge of probate where it is proposed the corporation shall have its principal place of business a declaration signed by them, stating the names and residence of the subscribers, the name and style of the proposed corporation, the general purposes of the corporation, the nature of the business intended, and the principal place of business or location of the corporation, the amount of the capital stock and the number of shares into which it is divided, and any other matter it is deemed desirable to state.³ The judge of probate then authorizes two or more of the subscribers to open books of subscription to the capital stock of the corporation.⁴ When fifty per cent. of the proposed capital stock has been subscribed *bona fide* and twenty per cent. of the amount subscribed has been paid in, a meeting is held for organization; and the record of the meeting with an affidavit of payment of the required percentage having been filed with the probate judge he issues a certificate stating that the corporation is duly organized.⁵ The ordinary powers are granted, including power to mortgage its property, real or personal, and its franchises, to secure debts; but it has no power to borrow a sum exceeding its capital stock, or at a rate of interest exceeding eight per cent.⁶ The corporation is limited to an existence of twenty years,⁷ which may be renewed by vote of a majority in value of the stockholders.⁸ The amount of capital stock is limited to ten million dollars.⁹ Amendments may be made by three-

² Ala. Code, § 1251.

³ *Ibid.* § 1252.

⁴ *Ibid.* § 1253.

⁵ *Ibid.* § 1255.

⁶ *Ibid.* § 1256.

⁷ *Ibid.*

⁸ *Ibid.* § 1260.

⁹ *Ibid.* § 1259.

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fourths of the stockholders and recorded like the original declaration.¹⁰

Mining, quarrying and manufacturing corporations are formed in the same way;¹¹ but their existence is perpetual unless limited in the charter.¹²

§ 12. Arizona.

Any number of persons may associate themselves together and become incorporated for the transaction of any lawful business, but such corporation shall confer no powers or privileges not possessed by natural persons, except as herein provided.¹³ Among the powers of such bodies corporate shall be the following: 1. To have perpetual succession; 2. To sue and be sued by the corporate name; 3. To have a common seal and alter the same at pleasure; 4. To render the shares or interest of stockholders transferable and prescribe the mode of making such transfers; 5. To exempt the private property of members from liability for corporate debts; 6. To make contracts, acquire and transfer property, possessing the same powers in such respects as private individuals now enjoy; 7. To establish by-laws and make all rules and regulations deemed expedient for the management of their affairs not inconsistent with the constitution and laws of the United States and laws of this Territory.¹⁴

Before commencing any business except that of their own organization, they must adopt articles of incorporation, which shall be signed and acknowledged by them as deeds are required to be acknowledged and recorded in a book for that purpose, in the office of the county recorder, where the principal place of business is to be. The articles of incorporation must contain: 1. The name of the corporators, the name of

¹⁰ *Ibid.* § 1283.

¹¹ *Ibid.* §§ 1139 *et seq.*

¹² *Ibid.* § 1144.

¹³ Ari. Rev. Stat. § 764.

¹⁴ *Ibid.* § 765.

the corporation and its principal place of transacting business. 2. The general nature of the business proposed to be transacted. 3. The amount of capital stock authorized and the time when and the condition upon which it is to be paid in. 4. The time of the commencement and termination of the corporation. 5. By what officers or persons the affairs of the corporation are to be conducted and the times at which they are to be elected. 6. The highest amount of indebtedness or liability to which the corporation is at any time to subject itself. 7. Whether private property is to be exempt from corporate debts. Unless so exempted, stockholders are liable for the debts of the corporation in the proportion [to] which their stock bears to the whole capital stock.¹⁵

Every corporation organized under the provisions of this Title shall file a copy of its articles of incorporation, certified to by the County Recorder of the county where said articles are recorded, in the office of the Secretary of the Territory, and have the same recorded by him in a book kept for that purpose. Such articles of incorporation must specify the highest amount of indebtedness and liability, direct or contingent, to which the corporation is at any time to be subject, which must in no case exceed two-thirds of the amount of the capital stock.¹⁶ Every corporation organized under the provisions of this Title shall publish at least six times in some newspaper published in the county in which the principal place of business is located or works established, if there be one, and if not, then in some newspaper having a general circulation in such county, a copy of its articles of incorporation, and, upon the expiration thereof, file an affidavit in the office of the Secretary of the Territory, stating that such publication has been made according to law.¹⁷

The corporation may commence business as soon as its articles of incorporation are filed for record in the office of

¹⁵ *Ibid.* § 766; 1903, No. 88, § 1.

¹⁶ Ari. Rev. Stat. § 767.

¹⁷ *Ibid.* § 768.

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the County Recorder, and a certified copy with the Secretary of the Territory, and its acts shall then be valid if the publication is made and an affidavit thereof filed in the office of the Secretary of the Territory, within three months of the date of the filing with the County Recorder.¹⁸

The capital stock of any corporation organized hereunder may be increased or decreased and the articles may be amended in any of the particulars mentioned in § 766 by the affirmative vote of a majority of the stock. Such amendment shall be signed and acknowledged by the president and attested by the secretary of the corporation, and no such amendment shall be valid unless recorded and published as the original articles are required to be.¹⁹

Corporations organized under this Title may be formed to endure for twenty-five years, but they may be renewed from time to time for a period of not exceeding twenty-five years, when three-fourths of the votes cast at any stockholders' meeting duly called and held for that purpose shall be in favor of such renewal.²⁰

No corporation organized under the provisions of this title for the purpose of doing a mining or manufacturing business shall have power to construct or operate any railroad, tramway, turnpike or canal, except such as may lead from its principal works or place of business to some navigable stream, or to some existing railroad, turnpike or public highway.²¹

§ 13. Arkansas.

Three or more persons may associate for "engaging or carrying on any kind of manufacturing, mechanical, mining, or other lawful business," under any name assumed by them.²² "The purpose for which every such corporation shall be established

¹⁸ *Ibid.* § 769.

¹⁹ *Ibid.* § 770; 1903, No. 88, § 2.

²⁰ *Ari. Rev. Stat.* § 771.

²¹ *Ibid.* § 781.

²² *Ark Stat.* § 1326.

shall be distinctly and definitely specified by the stockholders in their articles of association, and it shall not be lawful for said corporation to direct its operations or appropriate its funds for any other purpose.”²³ Before beginning business, a copy of the articles of association and a certificate stating the purpose for which the corporation is formed, the amount of capital stock, the amount actually paid in, and the names of its stockholders and the number of shares by each respectively owned shall be filed with the Secretary of State, and a duplicate with the clerk of the county in which such corporation is to transact business.²⁴ A certificate of condition is annually filed with the county clerk and recorded; this certificate states “the amount of capital stock actually paid in, the cash value of its real estate, the cash value of its personal estate, the cash value of its credits, the amount of its debts, the name and number of shares of each stockholder.”²⁵ “Every such corporation shall, by its corporate name, have power to acquire and hold such lands, tenements and hereditaments and such property of every kind as shall be necessary for the purpose of said corporation; and such other lands, tenements and hereditaments as shall be taken in payment of, or as security for, debts due to such corporation, and to manage and dispose of the same at pleasure.”²⁶ Every such corporation may amend its articles by specifying any other lawful business in which it may desire to engage; but before commencing such business it shall file certificates as before, and also advertise the amendment in a newspaper published in the county where the corporation is located or in an adjoining county.²⁷ The corporation may remove its place of business from one county in the State to another; but in that case it shall record with the county clerk its articles, certificate of

²³ *Ibid.* § 1328.

²⁴ *Ibid.* § 1334.

²⁵ *Ibid.* § 1337.

²⁶ *Ibid.* § 1340.

²⁷ *Ibid.* § 1343.

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condition, and certificate of removal, and publish the latter in a newspaper in each county.²⁸

§ 14. California.

Five or more persons, a majority of whom must be residents of the State,²⁹ may form a corporation "for any purpose for which individuals may lawfully associate themselves."³⁰ The Articles of Incorporation must state, "1. The name of the incorporation. 2. The purpose for which it is formed. 3. The place where its principal business is to be transacted. 4. The term for which it is to exist, not exceeding fifty years. 5. The number of its directors or trustees, which shall be not less than five. . . . 6. The amount of its capital stock, and the number of shares into which it is divided. 7. If there is a capital stock, the amount actually subscribed, and by whom."³¹ The articles must be subscribed by five or more persons, a majority of whom must be residents of the State.³² No corporation shall engage in any business other than that expressly authorized in its charter; nor hold real estate, except such as is necessary for carrying on its business, longer than five years.³³ The articles are filed in the County Clerk's office, and a copy with the Secretary of State; the latter then issues a certificate of incorporation. No corporation can be formed, however, with the same name as an existing corporation, or one "so closely resembling the name of such corporation as will tend to deceive."³⁴

The ordinary powers of corporations are enumerated,³⁵ and it is then provided that in addition to powers expressly given "no corporation shall possess or exercise any corporate powers

²⁸ *Ibid.* § 1357.

²⁹ Cal. Civil Code, § 285.

³⁰ *Ibid.* § 286.

³¹ *Ibid.* § 290.

³² *Ibid.* § 292.

³³ Cal. Const. Art. 12, § 9.

³⁴ Cal. Civil Code, § 296.

³⁵ *Ibid.* § 354.

except such as are necessary to the exercise of the powers so enumerated and given." ³⁶ "No corporation shall create or issue bills, notes, or other evidences of debt, upon loans or otherwise, for circulation as money," ³⁷ or "acquire or hold any more real property than may be reasonably necessary for the transaction of its business or the construction of its works, except as otherwise specially provided." ³⁸ "Any corporation of this State owning grants, concessions, franchises, and properties, or any thereof, in any foreign country," may sell them to such government, or to any person or corporation, foreign or domestic, with the written consent of the holders of two-thirds of the capital stock. ³⁹

The articles may be amended by a two-thirds vote, the amendment being filed like the original articles; but the time of existence of the corporation cannot be extended by amendment. ⁴⁰

§ 15. Colorado.

Corporations may be formed for any lawful purpose. The corporate name "shall commence with the word 'the' and end with word 'corporation,' 'company,' 'association' or 'society,' and shall indicate by its corporate name the business to be carried on by said corporation." ⁴¹ Three or more persons execute a certificate "in which shall be stated the corporate name of said company, the objects for which the company shall be created, the amount of capital stock of said company, the term of its existence, not to exceed twenty years, except as hereinafter provided, . . . the number of shares of which the said stock shall consist, the number of directors or trustees of said company and the names of those who shall manage the affairs of such company for the first

³⁶ *Ibid.* § 355.

³⁷ *Ibid.* § 356.

³⁸ *Ibid.* § 360.

³⁹ *Ibid.* § 364.

⁴⁰ *Ibid.* § 362.

⁴¹ Col. Ann. Stat. § 472.

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year of its existence, and the name of the town or place, and the county, in which the principal office of the company shall be kept, and the name of the county or counties in which the principal business shall be carried on; . . . and when any company shall be created under the laws of this State for the purpose of carrying on part of its business beyond the limits thereof, such certificate shall state that fact, and shall also state the name of the town and county in this State in which the principal office of said company shall be kept, and shall state the name of the county in which the principal business of such company is to be carried on within this State.”⁴² A copy of this certificate is to be filed with the recorder of deeds in each county in which the business is to be carried on, and with the Secretary of State; “but no certificate shall be filed or received for two corporations bearing the same name.”⁴³ Corporations formed under this act “may own, possess and enjoy so much real and personal estate, as shall be necessary for the transaction of their business, whether acquired by purchase, grant, devise, gift or otherwise, and may from time to time sell and dispose of the same or any part thereof when not required for the use of the corporation. They may borrow money and pledge their franchises and property both real and personal to secure the payment thereof; and may have and exercise all the powers necessary and requisite to carry into effect the objects for which they may be formed, as named in their certificate of incorporation.”⁴⁴ The articles may be amended, but not so as “to work a change in the object or purpose for which said corporation was originally organized.”⁴⁵ Books are to be kept at the principal office within the State and each stockholder has a right to examine the books.⁴⁶

⁴² *Ibid.* § 473.

⁴³ *Ibid.* §§ 474, 475.

⁴⁴ *Ibid.* § 476.

⁴⁵ *Ibid.* § 477.

⁴⁶ *Ibid.* § 488.

"It shall and may be lawful for any corporation created or existing under the laws of this State for the purpose, among others, of exercising its franchises or carrying on part of its business beyond the limits of this State, and in another State or Territory of the United States or elsewhere, to accept any law of such other State or Territory of the United States, or foreign state and government, and to exercise within the territory of such other State or Territory, or foreign state and government, all such authorities, powers, privileges, rights and franchises as may be by such laws conferred, subject to such duties, liabilities and restrictions as may by such laws be imposed." ⁴⁷

§ 16. Connecticut.

Corporations may be organized under general law or by special charter. Under general law the following provisions apply: "The name of every corporation hereafter formed shall be such as to distinguish it from any other corporation organized under the laws of this State and from any other corporation engaged in the same business or promoting or carrying out the same purposes in this State, and every such name shall begin with 'The' and end with 'Company' or 'Corporation,' or have the word 'Incorporated' immediately after or under the name. Every corporation shall be located in some town in this State." ⁴⁸ The ordinary powers are granted, including power "To hold, purchase, sell, and convey such real and personal estate as the purposes of such corporation shall require, and all other property which shall have been in good faith mortgaged or conveyed to it by way of security or in satisfaction of debts or by purchase at sales upon judgments or decrees obtained for such debts;" ⁴⁹ and also, subject to the limitations of its articles of incorporation (and also, in the case of corporations created by special act, of its

⁴⁷ *Ibid.* § 498.

⁴⁸ Conn. 1903, ch. 194, § 2.

⁴⁹ *Ibid.* § 3.

charter) to carry on business in any other State or country if not prohibited by the law there.⁵⁰ It may also share its profits with its employees.⁵¹

The officers of the corporation make an annual report, showing the name and address of each of its officers and directors, the amount of its outstanding capital stock which has not been paid for in full, with the amount due thereon, and the location of its principal office in the State.⁵² "Every person having charge of the stock books of any corporation shall furnish information as to the number of shares held by any stockholder in such corporation to any applicant who shall furnish the person in charge of such books with an affidavit that the applicant is a creditor of such stockholder. Any person in charge of books as aforesaid refusing to give such information shall be fined not more than one hundred dollars." ⁵³

The corporation is formed by three or more persons for the transaction of any lawful business. "Such corporation shall not have power, however, to transact in this State the business of a bank, savings bank, trust company, building and loan association, insurance company, surety or indemnity company, railroad or street railway company, telegraph or telephone company, gas, electric light, or water company, or of any company requiring the right to take and condemn lands or to occupy the public highways of this State, but shall have power to transact such business in any State or Territory of the United States, or in any foreign country, if not prohibited by the laws of such State or Territory or foreign country." ⁵⁴

The persons associated shall file a certificate setting forth the name, location, and nature of the corporation, the amount of authorized capital stock, which shall be not less than \$2,000, the amount of capital stock with which the corporation shall

⁵⁰ *Ibid.* § 4.

⁵¹ *Ibid.* § 9.

⁵² *Ibid.* § 37.

⁵³ *Ibid.* § 39.

⁵⁴ *Ibid.* § 62.

commence business, which shall be not less than \$1,000, the period, if any, limited for the duration of the corporation, and "any lawful provisions which the incorporators may choose to insert for the regulation of the business of the corporation or for defining and regulating the powers of the corporation, its officers, directors, and stockholders or any class of stockholders. Upon the approval of the certificate of incorporation by the Secretary of the State, corporate existence shall begin.⁵⁵ After the approval of the certificate of incorporation as aforesaid and until the directors are elected, the incorporators shall have charge of the affairs of the corporation, and may take such steps as are necessary or proper to obtain subscriptions to its stock."⁵⁶ The corporation is organized by a meeting held after publication of notice in a newspaper or by a written waiver by all the subscribers to the capital stock and a majority of the incorporators.⁵⁷

"No such corporation shall commence business until the amount of capital specified in its certificate of incorporation as the amount of capital with which it will commence business has been paid in; nor until its directors and officers have been duly elected and its by-laws adopted; nor until a majority of its directors have caused to be filed a certificate of organization setting forth: (1) The amount of each class of stock subscribed for; (2) The amount paid thereon in cash; (3) The amount paid thereon in property other than cash; (4) The amount paid on each share of stock which is not paid for in full; (5) The name, residence, and address of each of the original subscribers, with the number and class of shares subscribed for by each; (6) That the directors and officers of the corporation have been duly elected and its by-laws adopted; (7) The name, residence and post-office address of each of the officers and directors."⁵⁸

⁵⁵ *Ibid.* §§ 63, 64, 65.

⁵⁶ *Ibid.* § 66.

⁵⁷ *Ibid.* § 67.

⁵⁸ *Ibid.* § 69.

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The certificate of incorporation may be amended in any particular, provided that the amendment might have been lawfully inserted in the original certificate.⁵⁹

§ 17. Delaware.

"Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose under the provisions of and subject to the requirements of this Act as hereinafter provided; excepting for [banking]. . . .

"Corporations for constructing, maintaining and operating railroads, railways, telegraph or telephone lines outside of this State may be formed under the general provisions of this Act, but corporations for constructing, maintaining and operating railroads or railways within this State shall be subject to the special provisions and requirements of this Act applicable to such corporations."⁶⁰ The ordinary powers are conferred upon such corporations, including power "to hold, purchase and convey real and personal estate, and to mortgage any such real and personal estate with its franchises; the power to hold real and personal estate, except in the case of religious corporations, shall include the power to take the same by devise or bequest," and "to conduct business in this State, other States, the District of Columbia, the territories and colonies of the United States and in foreign countries, and have one or more officers out of this State, and to hold, purchase, mortgage and convey real and personal property out of this State, provided such powers are included within the objects set forth in its certificate of incorporation;"⁶¹ also any powers expressly conferred; "and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the

⁵⁹ *Ibid.* § 74.

⁶⁰ Del. Gen. Corp. L. § 1.

⁶¹ *Ibid.* § 2.

powers so given.”⁶² No corporation created under the provisions of this act “shall, by any implication or construction, be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, of receiving deposits of money, of buying gold and silver bullion, or foreign coins, or buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt for circulation as money.”⁶³

The certificate of incorporation shall set forth: “The name of the corporation, which name shall contain one of the words ‘association,’ ‘company,’ ‘corporation,’ ‘club,’ ‘incorporated,’ ‘society,’ ‘union’ or ‘syndicate,’ and shall be such as to distinguish it from any other corporation engaged in the same business, or promoting or carrying on the same objects or purposes in this State;” the location of the principal office in the State, the nature of the business, the amount of the total authorized capital stock, which shall be not less than \$2,000, and the amount with which it shall commence business, which shall be not less than \$1,000; the names and addresses of the subscribers to the capital stock; “whether or not the corporation is to have perpetual existence, if not, the time when its existence is to commence and the time when its existence is to cease; whether the private property of the stockholders shall be subject to the payment of corporate debts, and if so, to what extent. The certificate of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any classes of the stockholders; *provided*, such provisions are not contrary to the laws of this State.”⁶⁴ The certificate, signed and acknowledged by the incorporators, shall be filed with the

⁶² *Ibid.* § 3.

⁶³ *Ibid.* § 4.

⁶⁴ *Ibid.* § 5.

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Secretary of State, and also recorded in the office of the Recorder of Deeds in the county where the principal office is located.⁶⁵ "Upon making the certificate of incorporation and causing the same to be filed, and a certified copy thereof recorded as aforesaid, and paying the license tax therefor to the Secretary of State, the persons so associating, their successors and assigns, shall from the date of such filing be and constitute a body corporate, by the name set forth in said certificate, subject to dissolution as in this Act elsewhere provided. Until the directors are elected, the signers of the certificate of incorporation shall have the direction of the affairs and of the organization of the corporation, and may take such steps as are proper to obtain the necessary subscriptions to stock and to perfect the organization of the corporation."⁶⁶

The corporation is organized at a meeting called by a majority of incorporators named in the certificate; the notice is either published in a newspaper, or served two days before the meeting upon all the incorporators personally or all the incorporators may waive notice in writing.⁶⁷

§ 18. District of Columbia.

Any three or more persons may form a corporation "for carrying on any enterprise or business which may be lawfully conducted by an individual, excepting banks of circulation or discount, railroads, and such other enterprise or business as may be otherwise specially provided for in this Code [which seems to include insurance companies, loan and mortgage companies, building associations and cemetery associations] and "corporations to buy, sell or deal in real estate, except corporations to transact the business ordinarily carried on by real-estate agents or brokers."⁶⁸ The certificate, which

⁶⁵ *Ibid.* § 6.

⁶⁶ *Ibid.* §§ 7, 8.

⁶⁷ *Ibid.* § 11.

⁶⁸ Dist. Col. Code, § 605.

the incorporators sign, acknowledge, and file with the recorder of deeds, states the name and object of the company, the term of its existence, which may be perpetual, the amount of capital stock and number of shares, the number of trustees for the first year and their names, and the name of the place in the District in which the operations of the company are to be carried on.⁶⁹ "When the certificate shall have been filed, in accordance with the provisions of the preceding section, the persons who shall have signed and acknowledged the same and their successors shall be a body politic and corporate in fact and in name, by the name stated in such certificate."⁷⁰ Each corporation makes an annual report, which is published in a newspaper, stating the amount of capital and the proportion actually paid in, and the amount of existing debts.⁷¹

§ 19. Florida.

"Any three or more persons may associate themselves and become incorporated for the transaction of any lawful business of a public or private character, including all works of internal improvement."⁷²

"The proposed charter of an intended corporation must be subscribed by three or more persons, and shall set forth: 1. The name of the corporation and the place of business. 2. The general nature of the business to be transacted. 3. The amount of the capital stock authorized, the number and par value of the shares into which it is divided, and the terms and conditions upon which it is to be paid in. 4. The term for which it is to exist. 5. By what officers the business or businesses of the company is to be conducted, and the times at which they will be elected, and the names of the officers who are to conduct the business or businesses until those elected at the first election shall be qualified. 6. The highest amount

⁶⁹ *Ibid.* § 606.

⁷⁰ *Ibid.* § 607.

⁷¹ *Ibid.* § 617.

⁷² Fla. Rev. Stat. § 2122.

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of indebtedness or liability to which the corporation can at any time subject itself. 7. The names and residences of the subscribers.”⁷³ The subscribing incorporators must state the amount of stock subscribed for by each, the total amount so subscribed to be not less than ten per cent. of the capital stock authorized; and from and after the issuance of letters patent, each of said subscribers shall be liable as if the subscription had been made after the issuance of the letters. Each of such subscribers shall acknowledge his signature before some officer authorized to take acknowledgment of deeds.⁷⁴

“The proposed charter, together with notice of the intention to apply to the governor for letters patent thereon, shall be published for four successive weeks, once each week, in some newspaper published in the county where the place of business is to be located, which notice shall be signed with the names of at least three of the subscribers, and the said proposed charter shall be on file in the Secretary of State’s office during the four weeks of publication.”⁷⁵

“The proposed charter, accompanied by the proof of publication of notice, shall then be produced to the governor, who shall examine the same, and if he find it to be in proper form, and for an object authorized by law, and that due notice has been given, letters patent shall issue incorporating the subscribers, their associates and successors, into a body politic and corporate, in deed and in law, by the name chosen, for the purposes and upon the terms named in the charter. The Secretary of State shall annex to the letters patent a certified copy of the charter, retaining the original on file.”⁷⁶ No two corporations shall bear the same corporate name.⁷⁷

“No corporation shall transact any business until it has had the letters patent with a certified copy of the charter recorded

⁷³ *Ibid.* § 2123.

⁷⁴ Fla. Rev. Stat. ch. 4895 [1901, No. 11], § 1.

⁷⁵ Fla. Rev. Stat. § 2124.

⁷⁶ *Ibid.* § 2125.

⁷⁷ *Ibid.* § 2151.

in the office of the clerk of the circuit court of the county wherein the principal place of business is located, and has also filed with the Secretary of State and with the said clerk (except in the case of building and loan associations) duplicate affidavits by its treasurer that ten per cent. of its capital stock has been subscribed and paid. If any corporation shall transact any business before complying with these requirements, or if any corporation chartered by a special act of the legislature shall transact any business before filing said duplicate affidavits and paying a charter fee of one hundred dollars to the Secretary of State for the State treasury, its stockholders, or in the latter case its incorporators and stockholders, shall be personally liable for all of the corporation debts as if they were members of a general partnership, and not stockholders of a corporation.” ⁷⁸

An amendment to the charter may be adopted by a three-fourths vote. Notice of the intention to apply to the governor for the change shall be published, and after four weeks’ notice the governor, if he finds that the change is “in proper form, and that due notice has been given, and that the proposed alteration or amendment will be beneficial and lawful, and not injurious to the community, and is in accord with the purposes of the charter, he shall approve thereof, and thereupon letters patent shall issue.” ⁷⁹ A change of name may be made more simply.⁸⁰

§ 20. Georgia.

A private corporation, for any purpose whatever except banking, insurance, railroad, canal, navigation, express, and telegraph, may be created in Georgia by complying with the following provisions of the Code:⁸¹

“The persons desiring the charter shall file in the office of the clerk of the superior court of the county in which they

⁷⁸ *Ibid.* § 2127.

⁷⁹ *Ibid.* § 2150.

⁸⁰ *Ibid.* § 2151.

⁸¹ Ga. Code, § 1676.

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desire to transact business, a petition or declaration specifying the objects of their association, and the particular business they propose to carry on, together with their corporate name, and the amount of capital to be employed by them actually paid in, and their place of doing business, and the time, not exceeding twenty years, for which they desire to be incorporated; which petition or declaration shall be published once a week for four weeks in the nearest public gazette to the point where such business is located, before said court shall pass an order declaring said application granted. After the granting by the court of the order of incorporation, the petition and said order shall be recorded together by said clerk in a book to be kept for that purpose, and to be known as 'The Record of Superior Court Charters,' and which shall be kept appropriately indexed by said clerk; but this shall not dispense with the recording of the order of incorporation upon the minutes of the court, also, as a part of the proceedings of the court. If, upon hearing such petition, the court shall be satisfied that the application is legitimately within the purview and intention of this Code, it shall pass an order declaring the said application granted, and the petitioners and their successors incorporated for and during a term not exceeding twenty years, with the privilege of renewal at the expiration of that time according to the provisions above set forth. A certified copy of this petition and order, under the seal of the court, shall be evidence of such incorporation in any court in this State.

"No corporation created under this article shall commence to exercise the privileges conferred by the charter until ten per cent. of the capital stock is paid in, and no charter shall have any force or effect for a longer period than two years, unless the incorporators, within that time, shall in good faith commence to exercise the powers granted by the act of incorporation. Corporations thus created may exercise all corporate powers necessary to the purpose of their organization, but shall make no contract or purchase, or hold any property

of any kind except such as is necessary in legitimately carrying into effect such purpose, or for securing debts due to the company."

§ 21. Hawaii.

On a written petition accompanied by proofs that three-fourths of the shares have been subscribed for, filed with the Secretary of the Territory [Minister of the Interior], he shall grant to all applicants charters of incorporation for agricultural, commercial, and manufacturing purposes, and for other incorporations, except banks, which can be chartered only by the legislature.⁸² The petition shall be accompanied by a certificate setting forth the location of the proposed company, the object of incorporation, the amount of stock, proposed duration of the company, time in which it is to organize, whether the liability of stockholders is proposed to be limited to the amount of their stock, or otherwise; and also whether the whole or any part of the capital stock is to be paid in before commencing operations, and if part, what part.⁸³ The list of stockholders is open to the inspection of stockholders and creditors.⁸⁴ The amount of debt shall not exceed the amount of capital stock.⁸⁵ The ordinary powers are granted,⁸⁶ but not banking powers.⁸⁷

§ 22. Idaho.

Five or more persons, one of whom must be a *bona fide* resident of the State, may be formed for any purpose for which individuals may lawfully associate themselves.⁸⁸ The articles of incorporation must state the name, purpose and location of the corporation, the term for which it is to exist, not ex-

⁸² Haw. Civ. L. § 2025.

⁸³ *Ibid.* § 2028.

⁸⁴ *Ibid.* § 2021.

⁸⁵ *Ibid.* § 2020.

⁸⁶ *Ibid.* §§ 2009, 2010.

⁸⁷ *Ibid.* § 2011.

⁸⁸ Ida. Rev. Stat. §§ 2086, 2087.

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ceeding fifty years, the number of directors or trustees, with the names and residence of those appointed for the first year, the amount of capital stock and number of shares, and if there is a capital stock the amount actually subscribed and by whom.⁸⁹ The articles are to be filed with the recorder of the county in which the principal business of the corporation is to be transacted, and a certified copy with the Secretary of State, and a certificate of filing is then issued; "and thereupon the persons executing the articles and their associates and successors shall be a body politic and corporate by the name stated in the articles, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated, or by law otherwise provided." ⁹⁰ The by-laws of the corporation are to be recorded in a book which shall be open to public inspection.⁹¹ A change of the principal place of business within the State may be made by vote of two-thirds of the capital stock. The change must be published in newspapers.⁹²

The ordinary powers are given.⁹³ "No corporation shall emit paper money or create or issue bills, notes, or other evidences of debt, upon loans or otherwise, for circulation as money." ⁹⁴ "No corporation must acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except such right of way or other property as it may acquire under the laws of Congress, or as may be otherwise specially provided." ⁹⁵ "If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation its corporate powers cease." ⁹⁶

⁸⁹ *Ibid.* § 2089.

⁹⁰ *Ibid.* § 2094.

⁹¹ *Ibid.* § 2101.

⁹² *Ibid.* § 2118.

⁹³ *Ibid.* § 2144.

⁹⁴ *Ibid.* § 2145.

⁹⁵ *Ibid.* § 2149.

⁹⁶ *Ibid.* § 2147.

§ 23. Illinois.

"Corporations may be formed in the manner provided by this act, for any lawful purpose except banking, insurance, real estate brokerage, the operation of railroads and the business of loaning money: *Provided*, that horse and dummy railroads, and organizations for the purchase and sale of real estate for burial purposes only, may be organized and conducted under the provisions of this act: *And, provided further*, that corporations formed for the purpose of constructing railroad bridges shall not be held to be railroad corporations."⁸⁷

Whenever any number of persons, not less than three nor more than seven, shall propose to form a corporation under this act they shall make a statement to that effect under their hands and duly acknowledged before some officer in the manner provided for the acknowledgments of deeds, setting forth the name of the proposed corporation, the object for which it is to be formed, its capital stock, the number of shares of which such stock shall consist, the location of its principal office and the duration of the corporation, not exceeding, however, 99 years, which statement shall be filed in the office of the Secretary of State. The Secretary of State shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of said corporation at such times and places as they may determine, but no license shall be issued to two companies having the same name.⁸⁸

The commissioners named convene a meeting for organization, giving ten days' notice by mail to every subscriber.⁸⁹ "The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the foregoing section, a copy of the subscription list, and the names of the directors or managers elected, and their respective terms of office, which report shall be sworn to by at

⁸⁷ Ill. Corp. Law (Acts of April 18, 1872, April 19, 1879, June 5, 1889, April 21, 1899), § 1.

⁸⁸ *Ibid.* § 2.

⁸⁹ *Ibid.* § 3.

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least a majority of the commissioners, and shall be filed in the office of the Secretary of State. The Secretary of State shall thereupon issue a certificate of the complete organization of the corporation, making a part thereof a copy of all papers filed in his office in and about the organization of the corporation, and duly authenticated under his hand and seal of State, and the same shall be recorded in a book for that purpose, in the office of the recorder of deeds of the county where the principal office of such company is located. Upon the recording of said copy, the corporation shall be deemed fully organized, and may proceed to business. Unless such company shall be organized, and shall proceed to business as provided in this act, within two years after the date of such license, then such license shall be deemed revoked and all proceedings thereunder void." ¹⁰⁰

"Corporations formed under this act shall be bodies corporate and politic for the period for which they are organized; may sue and be sued; may have a common seal which they may alter or renew at pleasure; may own, possess and enjoy so much real and personal estate as shall be necessary for the transaction of their business, and may sell and dispose of the same when not required for the uses of the corporation. They may borrow money at legal rates of interest, and pledge their property, both real and personal, to secure the payment thereof; and may have and exercise all the powers necessary and requisite to carry into effect the objects for which they may be formed: *Provided, however,* that all real estate, so acquired in satisfaction of any liability or indebtedness, unless the same may be necessary and suitable for the business of such corporation, shall be offered at public auction, at least once every year, at the door of the court house of the county wherein the same may be situated, or on the premises so to be sold, after giving notice thereof for at least four consecutive weeks in some newspaper of general circulation published in said county; and if there be no such newspaper published

¹⁰⁰ *Ibid.* § 4.

therein, then in the nearest adjacent county where such newspaper is published; and said real estate shall be sold whenever the price offered for it is not less than the claim of such corporation, including all interest, costs, and other expenses: *And, provided further*, that in case such corporation shall not, within such period of five years, sell such land, either at public or private sale as aforesaid, it shall be the duty of the State's attorney to proceed by information, in the name of the People of the State of Illinois, against such corporation, in the circuit court of the county within which such land, so neglected to be sold, shall be situated, and such court shall have jurisdiction to hear and determine the fact, and to order the sale of such land or real estate at such time and place, subject to such rules as the court shall establish. The court shall fix as the fees of the State's attorney such sum as shall be reasonable; and the proceeds of such sale, after deducting the said fees and costs of proceedings, shall be paid over to such corporation. The provisions of this section shall apply to and be binding upon all corporations now existing by virtue of any special charter granted by this State."¹⁰¹

"It shall be unlawful for the Secretary of State to issue a license for any person or persons to incorporate under the name of any heretofore existing corporation organized under any general law of this State, until the expiration of 30 days from and after the expiration of the existence of such corporation: *Provided*, that the corporation enjoying such name shall have the exclusive privilege of becoming incorporated under the same name at any time within the said 30 days, according to the provisions of the act to which this is an amendment."¹⁰²

§ 24. Indiana.

Three or more persons may associate by signing and acknowledging written articles of association, which shall specify

¹⁰¹ *Ibid.* § 5.

¹⁰² *Ibid.* § 28½ (Amended June 16, 1887).

"the corporate name of such association, which shall not be the same or similar to the name of any other association incorporated in this State;" the amount of capital stock and number of shares; "the object of such association, with the proposed plan of doing business fully set out;" names and residences of incorporators, and principal place of business; term of existence, which if organized for profit shall not exceed fifty years; description of the corporate seal; manner of election and number of directors, with the names of those for the first year.¹⁰³

An association may be formed for certain specified purposes only.¹⁰⁴ In addition to associations not for profit, corporations for the following purposes may be formed. Safe deposit and loan companies,¹⁰⁵ building, owning and carrying on hotels, or buildings for residence or business purposes,¹⁰⁶ buying, holding and selling real estate, collecting rents and soliciting and writing insurance,¹⁰⁷ buying, leasing and holding mineral springs; boring, buying, digging, owning, leasing, holding and improving mineral wells, the improvement of the grounds attached thereto, and the building and carrying on of hotels, cottages, bath houses and other conveniences thereon for the use of visitors, and to organize associations for the purpose of carrying on pleasure or health resorts, the erection and maintenance of hotels, club, boating and bathing houses, sanitariums and gymnasiums in connection therewith;¹⁰⁸ sinking and operating oil and gas wells, and selling the product;¹⁰⁹ importing live-stock and registering and maintaining a register of imported registered live-stock, and improving it;¹¹⁰ buying and selling merchandise and conducting mercantile opera-

¹⁰³ Ind. Rev. Stat. of 1901, § 4583.

¹⁰⁴ *Ibid.* § 4584.

¹⁰⁵ *Ibid.* § 4591.

¹⁰⁶ *Ibid.* § 4592.

¹⁰⁷ *Ibid.* § 4593.

¹⁰⁸ *Ibid.* § 4594.

¹⁰⁹ *Ibid.* § 4595.

¹¹⁰ *Ibid.* § 4595 a.

tions;¹¹¹ organizing forwarding and commission companies, and owning and operating wharf boats in connection therewith, upon any of the rivers within or bordering upon the State;¹¹² insuring titles to real estate, and making abstracts, loans and collections in connection therewith;¹¹³ buying and selling State, county, municipal and all other bonds, borrowing and loaning money, buying and selling promissory notes, bills of exchange, accounts, choses in action, fees and all other evidence of indebtedness, and buying, holding, owning, mortgaging, leasing and selling real estate and personal property (but not authorized to do a general banking or trust business);¹¹⁴ organizing storage and cold storage companies;¹¹⁵ carrying on an omnibus and transfer business, and the business of carting and draying and the letting of vehicles and horses for hire.¹¹⁶

The articles of association shall first be presented to the Secretary of State, and with them full written or printed statements of the proposed plan of doing business; and if, upon examination, said Secretary of State shall find said articles to be according to law, and its proposed plan of doing business not inconsistent with the existing laws of the State of Indiana, or of the United States, and upon the payment of the fees prescribed by law, he shall issue to such corporation a certificate of incorporation, which shall be *prima facie* evidence of such incorporation. After such approval a duplicate of the articles shall be filed in the Recorder's office of the county where the principal place of business is located.¹¹⁷ The corporation thus formed is given the ordinary corporate powers.¹¹⁸ A copy of the articles is filed with the State Auditor, who

¹¹¹ *Ibid.* § 4595 b.

¹¹² *Ibid.* § 4595 d.

¹¹³ *Ibid.* § 4595 e.

¹¹⁴ *Ibid.* § 4595 i; 1903, ch. 49.

¹¹⁵ Ind. Rev. Stat. § 4595 k.

¹¹⁶ *Ibid.* § 4595 l.

¹¹⁷ *Ibid.* § 4595 n.

¹¹⁸ *Ibid.* § 4595 o.

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exercises supervision over the corporation to prevent the doing of business not authorized by law.¹¹⁹

The formation of mining and manufacturing corporations is provided for by a different act. Under this act three or more persons may form a corporation for any of the following purposes: (a) Any kind of manufacturing, mining, mechanical or chemical business or to furnish motive power to conduct such business; (b) To supply any city, town, village or community with water, light, heat or power; (c) To own, construct, operate and maintain stockyards and transit companies and conduct and transact the business incident thereto; (d) To own, construct, maintain and operate grain elevators and transact the business incident thereto; (e) To buy and sell any kind or kinds of merchandise in connection with the manufacture of such merchandise, and for the sale of such merchandise when manufactured. The certificate signed and executed by the incorporators shall state the corporate name adopted by the company, the object or objects of its promotion, which may include any or all of the purposes included in any one of the above named subdivisions of this section, the amount of the capital stock, the term of its existence (not however to exceed fifty years), the number of directors and the names of those who shall manage the affairs of such company for the first year, and the name of the city or town in which its principal place of business is to be located. This certificate shall be filed with the County Recorder, and a duplicate with the Secretary of State.¹²⁰ Upon the filing of the certificate as above, the corporation comes into existence.¹²¹ It may hold real estate necessary to carry on its business, such as is mortgaged to it to secure a debt or is taken in payment of a debt, or purchased on judgments, decrees or mortgages obtained or made for such debts.¹²² It pub-

¹¹⁹ *Ibid.* § 4595 p.

¹²⁰ Ind. 1903, ch. 73, § 1.

¹²¹ Ind. Rev. Stat. § 5052.

¹²² *Ibid.* § 5053.

lishes in a newspaper in the county an annual report, stating the amount of capital, the amount of assessments made and actually paid in, and the amount of existing debts.¹²³ The objects of the corporation may be enlarged by all the stockholders, upon filing a new certificate.¹²⁴

All corporations are governed by the following provisions: "When the steps necessary to an organization of a corporation, municipal or private, under any general law, have been completed, a statement thereof may be filed in the office of the Clerk of the Circuit Court of the proper county; and such court, at its next term thereafter, shall, on proof of such organization, cause to be entered of record, in the order-book, an order declaring the existence of such corporation; and such order shall be conclusive as to the fact of such existence at the date which such court may fix in such order."¹²⁵ "The first meeting of all corporations shall, unless otherwise provided for, be called by a notice signed by three or more members, setting forth the time, place, and purposes of the meeting; and shall, ten days at least before the meeting, be delivered to each member, or published in some newspaper of the county where the corporation may be established, or, if none, then in some newspaper in this State nearest thereto."¹²⁶ "All companies organized under the laws of this State heretofore incorporated or hereafter incorporated within this State, shall have full power and authority from time to time to borrow money at any rate of interest not exceeding the legal rate of interest allowed by law of the State where the loans may be negotiated or money borrowed, to be agreed upon between the parties, for the purpose of enabling such company to purchase real estate, erect buildings with all necessary machinery and fixtures and necessary funds to carry on the improvements and operations of such company; and as

¹²³ *Ibid.* § 5064.

¹²⁴ *Ibid.* § 5078.

¹²⁵ *Ibid.* § 3423.

¹²⁶ *Ibid.* § 3427.

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an evidence of such loans or for the purchase of materials or necessary improvements, on time, may issue its corporate bonds or promissory notes, and secure the repayment thereof, with the interest which shall accrue, may mortgage its franchise, real estate, income and all other property, and may, by its President or other officers or agents, sell, dispose or negotiate such bonds, notes or the stock of such company, at such time and at such places, either within or without this State, and at such rates and for such prices as in the opinion of the company will best advance its interest."¹²⁷

§ 25. Iowa.

Any number of persons may become incorporated for the transaction of any lawful business.¹²⁸ If a single person becomes incorporated, and adopts as the corporate name the name of an individual or individuals, he must add the word "incorporated."¹²⁹ The ordinary powers are granted, including the power "to exempt the private property of its members from liability for corporate debts, except as otherwise declared."¹³⁰ Before beginning business (except that of organization) the incorporators must adopt and execute articles of incorporation, and record them in the office of the Recorder of Deeds in the county where the principal place of business is to be; having been recorded, the articles must then be sent to the Secretary of State.¹³¹ "Such articles must fix the highest amount of indebtedness or liability to which the corporation is at any one time to be subject, which in no case, except risks of insurance companies, and liabilities of banks not in excess of their available assets, not including their capital, shall exceed two-thirds of its capital stock. But the provisions of this section shall not apply to the bonds or other railway or street railway securities, . . . nor . . .

¹²⁷ *Ibid.* § 3442.

¹²⁸ Ia. Code, § 1607.

¹²⁹ *Ibid.* § 1608.

¹³⁰ *Ibid.* § 1609.

¹³¹ *Ibid.* § 1610.

to the debentures or bonds of any company incorporated under the provisions of this chapter, the payment of which shall be secured by an actual transfer of real estate securities for the benefit and protection of purchasers thereof; such securities to be at least equal in amount to the par value of such bonds or debentures, and to be first liens upon unincumbered real estate worth at least twice the amount loaned thereon.”¹³² If the corporation transacts business in Iowa, “the articles shall fix its principal place of business, which must be in this State, and in charge of an agent of the corporation, at which place it shall keep its stock and transfer books and hold its meetings.”¹³³ A notice must be published in a newspaper “as convenient as practicable to the principal place of business” containing the name and location of the corporation, the general nature of the business, the amount of capital stock authorized and times and conditions on which it is to be paid in, the officers to be created and the time and manner of their election, the extent of indebtedness to which it can subject itself, and whether private property is to be exempt from corporate debts.¹³⁴ The corporation may, however, begin business as soon as the certificate is issued by the Secretary of State, and its acts are valid if the publication is made within three months.¹³⁵ Changes in the articles may be made by vote of the corporation, and published like the original articles.¹³⁶

Corporations (except those for internal improvement or insurance) shall endure for not more than twenty years, renewable from time to time.¹³⁷

“A copy of the by-laws of the corporation, with the names of all of its officers, must be posted in the principal places of business subject to public inspection. A statement of the

¹³² *Ibid.* § 1611.

¹³³ *Ibid.* § 1612.

¹³⁴ *Ibid.* § 1613.

¹³⁵ *Ibid.* § 1614.

¹³⁶ *Ibid.* § 1615.

¹³⁷ *Ibid.* § 1618.

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amount of capital stock subscribed, the amount of capital actually paid in, and the amount of the indebtedness in a general way, must also be kept posted in like manner, which shall be corrected as often as any material change takes place in relation to any part of the subject-matter thereof.¹³⁸

§ 26. Kansas.

Five or more persons, three of whom at least must be citizens of the State, may form a corporation.¹³⁹ "A charter must be prepared, setting forth: 1st, The name of the corporation. 2d, The purposes for which it is formed. 3d, The place or places where its business is to be transacted. 4th, The term for which it is to exist. 5th, The number of its directors or trustees, and the names and residences of those who are appointed for the first year. 6th, The amount of its capital stock, if any, and the number of shares into which it is divided. 7th, The names and addresses of the stockholders, and the number of shares held by each."¹⁴⁰ "The corporate name of every corporation hereafter organized (except banks, and corporations not for pecuniary profit), shall commence with the word 'the,' and end with the word 'corporation,' 'company,' 'association,' or 'society,' and shall indicate by its corporate name the business to be carried on by said corporation. Any corporation organized or existing under the provisions of this act may within the limits of this act amend its charter in any of the parts thereof; but in any such case such charter shall be so amended only when authorized by a two-thirds vote of the stockholders of such corporation at a meeting held in conformity with the by-laws thereof; and as so amended such charter shall be subscribed by the directors or trustees thereof, and acknowledged by not less than three thereof, who shall be citizens of this State, before an officer duly authorized to

¹³⁸ *Ibid.* §§ 1624, 1625.

¹³⁹ Kan. Gen. Stat. § 1256.

¹⁴⁰ *Ibid.* § 1253.

take acknowledgments of deeds, and thereupon filed and recorded in the same manner and with like effect as now provided in cases of original charters under provisions of this act." ¹⁴¹

A "charter board" is created, consisting of the Attorney-General, the Secretary of State, and the state bank commissioner.¹⁴² Persons seeking to form a private corporation apply to this board, stating the facts contained in the charter.¹⁴³ "The board shall make a careful investigation of each application and shall inquire especially with reference to the character of the business in which the proposed corporation is to engage, and if the board shall determine that the business or undertaking is one for which a corporation may lawfully be formed, and that the applicants are acting in good faith, the application shall be granted, and the secretary of the board shall issue a certificate setting forth the fact that the persons named in the application have been authorized by the charter board to form a private corporation as set forth in the application, reciting the proposed name and character thereof." ¹⁴⁴ Every corporation so created shall commence active operations within a year, "*Provided*, That no corporation, excepting railroad companies, shall commence business until it shall file with the Secretary of State an affidavit, made by its president and secretary, setting forth that not less than twenty per cent. of its authorized capital has been paid in actual cash." ¹⁴⁵

The officers of the corporation shall make an annual return to the Secretary of State, showing the condition of the corporation, the names and addresses of its officers, and "a full and complete list of the stockholders, with the post-office address of each, and the number of shares held and paid for

¹⁴¹ *Ibid.* § 1254.

¹⁴² *Ibid.* § 1259.

¹⁴³ *Ibid.* § 1260.

¹⁴⁴ *Ibid.* § 1263.

¹⁴⁵ *Ibid.* § 1311.

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by each. Notification is to be made of each change in ownership of stock." ¹⁴⁶

§ 27. Kentucky.

"Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose under the provisions of, and subject to the requirements of this article; but banking, building and loan, trust, insurance and railroad corporations shall, in addition to the provisions of this article, which are not inconsistent with the laws relating especially to them, be organized in the manner and subject to the provisions of such laws." ¹⁴⁷ Such persons shall execute articles of incorporation, which shall specify "the name of the corporation, which shall be such as to distinguish it from any other corporation engaged in the same business, or promoting or carrying on the same objects or purposes in this State," the location and business, amount of capital stock, number of shares, names and addresses of the stockholders and number of shares subscribed by each, time of commencement and period of continuance, what officers are to be chosen, and time and place of election, "the highest amount of indebtedness or liability which the corporation may at any time incur, and whether the private property of the stockholders, not subject by the provisions of the law under which it is organized, shall be subject to the payment of corporate debts, and if so, to what extent." ¹⁴⁸ The articles shall be signed and acknowledged and recorded in the county clerk's office of the county in which the principal office is, and in the office of the Secretary of State. ¹⁴⁹ The signers of the articles of incorporation have control of the organization and affairs of the corporation until the directors are elected. ¹⁵⁰

¹⁴⁶ *Ibid.* § 1283.

¹⁴⁷ Ky. Rev. Stat. § 538.

¹⁴⁸ *Ibid.* § 539.

¹⁴⁹ *Ibid.* § 540.

¹⁵⁰ *Ibid.* § 541.

“When the articles are filed and recorded as provided, and the license tax imposed is paid to the State, the corporation shall be deemed to be organized for the purpose of transacting, promoting or carrying on the business or purpose for which it was created; and shall thereupon become a body corporate,” with the ordinary powers;¹⁵¹ but “at least fifty per cent. of the capital stock of each corporation shall be in good faith subscribed before it shall be authorized to transact any business with the persons other than its stockholders.”¹⁵² Business must in good faith be commenced within two years or the organization is null.¹⁵³ The articles may be amended by a two-thirds vote of the capital stock, the amendment being recorded in the same way as the original articles.¹⁵⁴

A book shall be kept by every corporation in its principal office, in which shall be entered the name, post-office address and number of shares of stock held by each stockholder, and the time when each person became a stockholder; also all transfers of stock, stating date, the number of shares transferred and by and to whom. This book shall, at all times during business hours, be subject to the inspection of all stockholders and persons doing business with the corporation.¹⁵⁵

§ 28. Louisiana.

Three or more persons may constitute a corporation “for the purpose of carrying on any lawful business or enterprise not otherwise specially provided for, and not inconsistent with the constitution and laws of the State; provided that no such corporation shall engage in stock jobbing business of any kind; the corporations herein provided for to have a capital stock of not less than five thousand dollars.” The

¹⁵¹ *Ibid.* § 542.

¹⁵² *Ibid.* § 543.

¹⁵³ *Ibid.* § 565.

¹⁵⁴ *Ibid.* § 559.

¹⁵⁵ *Ibid.* § 546.

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word "limited" shall be the last word of the name of the corporation, and used in all signs, signatures, advertisements, etc.¹⁵⁶

Three or more persons may form a corporation for carrying on any mechanical, mining or manufacturing business (except distilling or manufacturing intoxicating liquors) with a capital not less than five thousand nor more than a million dollars;¹⁵⁷ and six or more persons may form a corporation for insurance and for various "works of public utility and advantage."¹⁵⁸

The duration of such corporations shall be limited to ninety-nine years, and they are granted the ordinary corporate powers.¹⁵⁹ The charter shall contain the name of the corporation and place of its domicile; the nature of its business, and designation of the officer on whom citation may be served; amount of capital stock, number of shares, and time and manner of payment of subscriptions; mode of election of directors, and of liquidation at termination of charter.¹⁶⁰ The charter shall be recorded in the office of the recorder of mortgages and published (without the names of the subscribers) in a newspaper at the domicile,¹⁶¹ and a copy of the charter and of the newspaper in which it is published shall be filed with the Secretary of State.¹⁶² Amendments may be made by stockholders' vote and recorded in the same way.¹⁶³

"No corporation shall engage in any business other than that expressly authorized in its charter or incidental thereto, nor shall it take or hold any real estate for a longer period than ten years, except such as may be necessary and proper for its legitimate business or purposes."¹⁶⁴ "No corporation shall

¹⁵⁶ La. 1888, Act 36, §§ 1, 2.

¹⁵⁷ La. 1882, Act 111.

¹⁵⁸ La. Civil Code, § 683.

¹⁵⁹ *Ibid.* § 684.

¹⁶⁰ *Ibid.* § 685.

¹⁶¹ *Ibid.* § 686.

¹⁶² La. 1898, ch. 59, § 1.

¹⁶³ La. Code, § 687.

¹⁶⁴ La. Const. Art. 265.

issue stock or bonds except for labor done or money or property actually received." ¹⁶⁵

§ 29. Maine.

"Three or more persons may associate themselves together by written articles of agreement, for the purpose of forming a corporation to carry on any lawful business, including corporations for manufacturing, mechanical, mining or quarrying business and also corporations whose purpose is the carriage of passengers or freight, or both, upon the high seas, or from port or ports in this state to a foreign port or ports, or to a port or ports in other states, or the carriage of freight or passengers, or both, upon any waters where such corporations may navigate; and excepting corporations for banking, insurance, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies or corporations intended to derive profit from the loan or use of money, and safe deposit companies, including the renting of safes in burglar-proof and fire-proof vaults." ¹⁶⁶

"Their first meeting shall be called by one or more of the signers of said articles, by giving notice thereof, stating the time, place and purposes of the meeting to each signer, in writing, or by publishing it in some newspaper printed in the county, at least fourteen days prior to the time appointed therefor. At such meeting they may organize into a corporation, adopt a corporate name, define the purposes of the corporation, fix the amount of the capital stock, which shall not be less than one thousand dollars, divide in into shares, and elect a president, not less than three directors, a clerk, treasurer, and any other necessary officers, and may adopt a code of by-laws." ¹⁶⁷ Notice may be waived in writing by

¹⁶⁵ *Ibid.* Art. 266.

¹⁶⁶ Me. Rev. Stat. ch. 47, § 6.

¹⁶⁷ *Ibid.* § 7.

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all the signers, in which case no notice or publication shall be necessary.¹⁶⁸

"Before commencing business, the president, treasurer, and majority of the directors shall prepare a certificate setting forth the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, and the number and names of the directors, and the name and residence of the clerk, and shall sign and make oath to it; and after it has been examined by the attorney general, and been by him certified to be properly drawn and signed and to be conformable to the constitution and laws, it shall be recorded in the registry of deeds in the county where said corporation is located, in a book kept for that purpose, and within sixty days after the day of the meeting at which such corporation is organized, a copy thereof certified by such register shall be filed in the secretary of state's office, who shall enter the date of filing thereon, and on the original certificate to be kept by the corporation, and shall record said copy in a book kept for that purpose."¹⁶⁹ The corporation becomes such from the date of filing the certificate in the Secretary of State's office.¹⁷⁰

The corporation so formed has the ordinary powers, and may by stockholder's vote change its name, its charter or its location, forwarding notice of such change to the Secretary of State;¹⁷¹ and it may conduct its business in other States.¹⁷²

"Any corporation of this state may conduct business in other states, territories, or possessions of the United States, or in foreign countries, and have one or more officers out of the state, and may hold, purchase, mortgage and convey real estate and personal property out of this state,"¹⁷³ but "all

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.* § 8.

¹⁷⁰ *Ibid.* § 10.

¹⁷¹ *Ibid.* § 47.

¹⁷² *Ibid.* § 48.

¹⁷³ *Ibid.*

corporations, existing by virtue of the laws of this state, shall have a clerk who is a resident of this state, and shall keep, at some place fixed within the state, a clerk's office where shall be kept their records and a book showing a true and complete list of all stockholders, their residences and the amount of stock held by each; and such book, or a duly proved copy thereof, shall be competent evidence in any court of this state to prove who are stockholders in such corporation and the amount of stock held by each stockholder. Such records and stock book shall be open at all reasonable hours to the inspection of persons interested, who may take copies and minutes therefrom of such parts as concern their interests, and have them produced in court on trial of an action in which they are interested. The above provisions as to list of stockholders shall not apply to any corporation doing business in this state and having a treasurer's office at some fixed place in the state where a stock book is kept giving the names, residences and amount of stock of each stockholder."¹⁷⁴ When there is a change of clerk, a certificate of election of the new clerk shall be filed in the registry of deeds of the district where the corporation is located.¹⁷⁵ A list of the stockholders is no longer officially filed.¹⁷⁶

§ 30. Maryland.

Five or more persons, citizens of the United States and a majority of them citizens of Maryland, may form a corporation for one or more purposes elaborately enumerated.¹⁷⁷ These include dealing in land wholly or partly in the State;¹⁷⁸ insurance and dealing in cattle;¹⁷⁹ manufacturing;¹⁸⁰ printing

¹⁷⁴ *Ibid.* § 20.

¹⁷⁵ *Ibid.* § 22.

¹⁷⁶ Me. 1885, ch. 315.

¹⁷⁷ Md. Gen. L. Art. 23, § 14.

¹⁷⁸ *Ibid.* § 16.

¹⁷⁹ *Ibid.* § 17.

¹⁸⁰ *Ibid.* § 19.

and publishing;¹⁸¹ "conducting or carrying on in this State and elsewhere any lawful wholesale or retail trading, commercial, or mercantile business, where the principal office and place of business of the corporation are located in this State;"¹⁸² and "for the acquiring, developing, improving, using, working or otherwise utilizing or disposing of any novelty, invention or process patented by the United States; and for the sale, lease, or other disposition of articles manufactured under such patent."¹⁸³

The incorporators sign and acknowledge a certificate in which shall be stated the names and residences of the applicants; the proposed corporate name, which shall always include the name of the county or city in which it may be formed; the purpose of the incorporation; the time of its existence, not to exceed forty years; the place of business; and the number of officers, with the names of those for the first year.¹⁸⁴ The certificate shall be submitted to one of the judges of the circuit within which the corporation is formed, certified by him to be in accordance with law, and recorded by the clerk of the court;¹⁸⁵ and the corporation then comes into legal existence.¹⁸⁶ Amendments voted by the corporation are put in force in the same way.¹⁸⁷ The ordinary powers are conferred;¹⁸⁸ and it is provided that no corporation shall possess any corporate powers except such as are conferred by law (meaning apparently the general incorporation act) and such as are necessary to the exercise of the powers so acquired.¹⁸⁹ The corporation shall keep a book containing the name and address of each stockholder and the number of his shares,

¹⁸¹ *Ibid.* § 19 a.

¹⁸² *Ibid.* § 20 a.

¹⁸³ *Ibid.* § 35.

¹⁸⁴ *Ibid.* § 42.

¹⁸⁵ *Ibid.* §§ 43, 44.

¹⁸⁶ *Ibid.* § 45.

¹⁸⁷ *Ibid.* § 46.

¹⁸⁸ *Ibid.* §§ 50-55.

¹⁸⁹ *Ibid.* § 56.

and this book shall be open to the inspection of stockholders and creditors;¹⁹⁰ and a statement of its financial condition shall be made semi-annually and entered in its books.¹⁹¹

§ 31. *Massachusetts.*

Business corporations are created under a special act, which does not apply to banks, insurance companies, or public-service companies, except that any corporation may be formed under the act for the purpose of carrying on any lawful business outside the commonwealth.¹⁹² Three or more persons may associate themselves by a written agreement to form a corporation for any of the above purposes except to buy and sell real estate or to distil or manufacture intoxicating liquor.¹⁹³ The corporation "may assume any name which shall indicate that it is a corporation as distinguished from a natural person or a partnership; but it shall not assume the name of another domestic corporation, or of a foreign corporation, or of any partnership or association, carrying on business in this commonwealth at the time of such organization or within three years prior thereto, or a name so similar thereto as to be liable to be mistaken for it, except with the consent in writing of such existing corporation, association or partnership, filed with the articles of organization."¹⁹⁴

The agreement of association shall state the corporate name; "the location of the principal office of the corporation in the commonwealth, and elsewhere in the case of corporations organized to do business wholly outside the commonwealth;" the purpose for which the corporation is formed and the nature of the business to be transacted; the total amount of the capital stock of the corporation, which shall not be less than one thousand dollars, to be authorized, the par value

¹⁹⁰ *Ibid.* § 72.

¹⁹¹ *Ibid.* § 73.

¹⁹² *Mass.* 1903, ch. 437, § 1.

¹⁹³ *Ibid.* § 7.

¹⁹⁴ *Ibid.* § 5.

of the shares, which shall not be less than five dollars, the number of shares into which the capital stock is to be divided, and the restrictions, if any, imposed upon their transfer, and, if there are to be two or more classes of stock, a description of the different classes and a statement of the terms on which they are to be created and of the method of voting thereon; any other provisions not inconsistent with law for the conduct and regulation of the business of the corporation, for its voluntary dissolution, or for limiting, defining or regulating the powers of the corporation, or of its directors or stockholders, or any class of stockholders; the subscriber or subscribers by whom the first meeting of the incorporators shall be called; and the names and residences of the incorporators and the amount of stock subscribed for by each.¹⁹⁵ The first meeting shall be called by a majority or a designated one of the subscribers, a copy of the notice being served on each subscriber seven days before the meeting, unless there is a written waiver of notice by every subscriber.¹⁹⁶ A majority of the directors there elected shall sign and swear to articles setting forth a copy of the agreement of association with the names of subscribers, the date of the first meeting, the names and addresses of the officers, and "the amount of capital stock then to be issued; the amount thereof to be paid for in full in cash; the amount thereof to be paid for in cash by instalments and the instalment to be paid before the corporation commences business; and the amount thereof to be paid for in property. If such property consists in any part of real estate, its location, area and the amount of stock to be issued therefor shall be stated; if any part of such property is personal, it shall be described in such detail as the commissioner of corporations may require, and the amount of stock to be issued therefor stated. If any part of the capital stock is issued for services or expenses, the nature of such services or expenses and the amount of stock which is issued therefor

¹⁹⁵ *Ibid.* § 8.

¹⁹⁶ *Ibid.* § 9.

shall be clearly stated.”¹⁹⁷ These articles and the record of the first meeting shall be submitted to the commissioner of corporations. If he finds them legal, he indorses his approval thereon. They are then filed in the office of the Secretary of the Commonwealth, who issues a certificate of incorporation. The existence of the corporation begins when the documents are filed with the Secretary.¹⁹⁸

Amendments may be made by a majority or two-thirds vote of the stockholders, according to the nature of the change, and they are approved and filed like the original articles.¹⁹⁹ Annual reports of condition are submitted to the commissioner of corporations, approved by him and filed with the Secretary of the Commonwealth.²⁰⁰

Manufacturing corporations are formed by an association of three or more persons with not less than five thousand dollars capital.²⁰¹ Such a corporation shall not commence to transact its business until the whole capital stock has been paid in and a certificate to that effect filed in the office of the Secretary of the Commonwealth.²⁰² The annual report states the names of the shareholders and the number of his shares.²⁰³

§ 32. Michigan.

Three or more persons may become incorporated for the purpose of carrying on any manufacturing or mercantile business, or any union of the two, or any other lawful business except banks, mining and insurance companies, railroads, and certain other public-service companies specially provided for.²⁰⁴

The articles of association, upon official blanks and signed and acknowledged by the persons associating, shall state:

¹⁹⁷ *Ibid.* § 11.

¹⁹⁸ *Ibid.* § 12.

¹⁹⁹ *Ibid.* §§ 40, 41.

²⁰⁰ *Ibid.* § 45.

²⁰¹ Mass. Rev. L. ch. 110, § 5.

²⁰² *Ibid.* § 43.

²⁰³ *Ibid.* § 51.

²⁰⁴ Mich. 1903, Act 232, § 1.

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"First, The name assumed and by which the corporation shall be known in law: *Provided*, No name shall be assumed already in use by any other existing corporation of this State, or corporation lawfully carrying on business in this State, or so nearly similar as to lead to uncertainty or confusion; Second, Distinctly and definitely, the purpose or purposes for which the corporation is formed, and it shall not be lawful for said corporation to divert its operations, or appropriate its funds to any other purpose, except as hereinafter provided; Third, The principal place or places at which its operations are to be conducted; Fourth, The amount of the total authorized capital stock which shall not be less than one thousand dollars, and not more than twenty-five million dollars; the amount of capital stock subscribed which shall not be less than fifty per cent. of the authorized capital stock; the articles may provide for common and preferred stock subject to section thirty-eight, and in that case shall contain an exact statement of the terms upon which the common and preferred stocks are created, and the amount of each subscribed, and the amount of each paid in; Fifth, The number of shares into which the capital stock is divided, which shall be of the par value of ten dollars or one hundred dollars each; Sixth, The amount of capital stock paid in at the time of executing the articles, which shall not be less than ten per cent. of the authorized capital, and in no case less than one thousand dollars, except in case of a capitalization of two thousand dollars or under, when it shall be twenty-five per cent. thereof, and the amount so paid in shall not be reduced below such per cent. of its capital. Such capital stock may be paid in, either in cash or in other property, real or personal; but where payment is made otherwise than in cash there shall be included in the articles an itemized description of the property in which such payment is made, with the valuation at which each item is taken, which valuation shall be conclusive in absence of actual fraud; Seventh, The place in the State of Michigan where the office of the company is located; Eighth, The term

of years the corporation is to exist, which shall not be to exceed thirty years; Ninth, The names of the stockholders, their respective residences, and the number of shares subscribed for by each. The articles of incorporation, besides defining the purposes for which the corporation is formed, as provided in sub-section second above, may also contain any provision which the incorporators may deem advantageous for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stock and stockholders: *Provided*, The same be not inconsistent with this act, or the general statutes of this State regulating corporations." ²⁰⁵ Any two of the signers may call a first meeting giving two weeks' notice by publication in a newspaper; but all the subscribers may waive the notice in writing. ²⁰⁶ The secretary and treasurer shall reside and transact the corporation's business at its office in the State, unless the articles provide for the location of the principal office outside the State. ²⁰⁷ It shall be lawful for the corporation to conduct its business in whole or in part at any place or places within the United States. ²⁰⁸

Before beginning business, the articles of association must be recorded in the office of the Secretary of State and in the office of the clerk of the county in which the operations are to be carried on or, in the case of corporations organized to operate outside the State, of the county in which the principal office is located. ²⁰⁹

An annual report is to be filed with the Secretary of State and the county clerk, stating the amount each of common and preferred capital stock authorized, and the amount thereof

²⁰⁵ *Ibid.* § 2.

²⁰⁶ *Ibid.* § 3.

²⁰⁷ *Ibid.* § 6.

²⁰⁸ *Ibid.* § 8.

²⁰⁹ *Ibid.* § 9.

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subscribed for, and the amount thereof actually paid in, in cash, and the amount thereof paid in property; the amount of capital invested in real and personal estate, and the present actual value of the same as near as may be estimated; the amount of debts of the corporation, and the amount of credits, and the present estimated value of the credits; the name and postoffice address of each stockholder and the number of shares of preferred and common stock held by him at the date of such report; the name and postoffice address of each officer and director of the corporation, and such other information as the Secretary of State may require. This report is filed with the Secretary of State and also with the county clerk.²¹⁰

The ordinary powers are conferred (including power to hold real estate for corporate purposes and as security for debt) and necessary incidental powers.²¹¹

The articles may be amended by a two-thirds vote, and the business may be removed; the amendment or certificate of removal being duly recorded with the Secretary of State and county clerk.²¹²

"It shall be lawful for any corporation organized or existing under the provisions of this act to establish an office or offices for the transaction of business without this State and within the United States and to hold any meeting of the stockholders or directors of such company at such office so provided for; *Provided*, That there shall always be one business office within this State, and that service of any notice or process may be made upon the agent in charge of such office, which shall be binding upon such corporation. The place of holding such offices shall be fixed by a vote of a majority of stockholders at any lawful meeting called for that purpose, and after being fixed shall not be changed within one year, and shall be certified by the directors of such corporation to the Secretary of State

²¹⁰ *Ibid.* § 12.

²¹¹ *Ibid.* §§ 13, 14.

²¹² *Ibid.* §§ 17, 18.

of this State within two months from the time such office or offices were so located.”²¹³

§ 33. Minnesota.

Three or more persons may associate themselves by an agreement in writing to form a corporation for any kind of manufacturing, lumbering, agricultural, mechanical, mercantile, chemical, transportation, or other lawful business not requiring the taking of private property for public uses. No company shall take a name previously assumed by any other company.²¹⁴ “Other lawful business” authorizes the formation of a corporation for carrying on any sort of lawful business for pecuniary profit, though not of one of the previously enumerated kinds.²¹⁵

The articles of incorporation contain the name and location of the corporation, the time of its continuance, the amount of capital stock and how paid in, the highest amount of indebtedness to which the corporation shall be subject, the names and addresses of the persons forming the names of the first directors, and what other officers are to be elected and when to be elected, and the number and amount of shares. This shall be published in a newspaper at the capital of the State or in the county where the corporation is organized. The articles shall also be filed with the register of deeds of the county where the principal office is to be, and with the Secretary of State. On an affidavit of publication being filed with the Secretary of State, the corporation comes into existence.²¹⁶

The corporation so formed is granted the ordinary powers; and the directors may alter the articles in certain points by vote, publishing and recording the alteration as before.²¹⁷ No corporation shall be formed to continue more than thirty

²¹³ *Ibid.* § 20.

²¹⁴ Minn. Gen. Stat. § 2794.

²¹⁵ *Brown v. Corbin*, 40 Minn. 508, 42 N. W. 481.

²¹⁶ Minn. 1901, ch. 99, § 1; Gen. Stat. §§ 2593, 2796.

²¹⁷ Minn. Gen. Stat. §§ 2595, 2796.

years,²¹⁸ which may be extended by a two-thirds vote of the stockholders, duly published and recorded.²¹⁹

§ 34. Mississippi.

Corporations may be created under the general law for every lawful purpose except railroads and street railroads and insurance.²²⁰ The persons (not restricted in number) desiring to be incorporated prepare a charter which "shall contain a clear and definite statement of the purposes for which the corporation is created, the names of the persons desiring to form the corporation, the corporate name by which it is to be known, the powers to be exercised, the period for which said corporation is to exist—never more than fifty years—together with whatever else may be proper to be stated." This shall be published for three weeks in a newspaper published or circulated at the domicile of the proposed corporation "and the charter so proposed and published, if required to be, shall be submitted for approval to the Governor, who shall take the advice of the Attorney General as to the constitutionality and legality of the provisions of such charter; and if the Governor approve it he shall write his approval at the bottom of it, and sign his name thereto, and shall also cause the great seal of the State to be thereto affixed by the Secretary of State; but the Governor may require amendments or alterations to be made previous to signing the same, or, if deemed expedient by him, he may withhold his approval entirely; and the powers therein specified shall, by the approval of the charter, be vested in such corporation, and it shall go into operation at the time and on the terms and conditions specified." ²²¹ Amendments and renewals are published and approved in the same way.²²² The ordinary

²¹⁸ *Ibid.* § 2802.

²¹⁹ 1901, ch. 207, § 1.

²²⁰ Miss. Code, § 832.

²²¹ *Ibid.* § 833.

²²² *Ibid.* § 834.

powers are conferred on the corporation. Its first meeting is to be called by a published ten-days' notice.²²³

"Every corporation created under this charter may hold real and personal estate necessary and proper for its purposes, not exceeding two hundred and fifty thousand dollars, manufacturing companies and banks excepted, which may purchase and hold property to the amount of one million dollars. And a corporation shall not have a trust, use or benefit in property held in the name of any other person for its use, either expressly or secretly, to a greater amount than it may lawfully hold, nor shall any corporation employ its capital, money, or other thing, in any other way than in the pursuit of its legitimate business; and a corporation offending against any of these provisions shall forfeit its charter, and shall also forfeit all property, real and personal, above the amount it may lawfully hold, to the State; but anything herein contained shall not prevent a corporation from taking a lien on property, real or personal, to a greater amount than it may hold, as a security for a debt, or from taking property to a greater amount than it may hold in payment of a debt, if the same shall not be held for a longer period than five years."²²⁴

§ 35. Missouri.

Three or more persons may associate for any manufacturing or business purpose (including the conduct of railroads and street railways and the supply of gas or water) not inconsistent with law, except banks and investment companies, and corporations otherwise provided for (which appear to be telegraph and telephone companies, building and loan associations, saving institutions and trust companies, booming and rafting companies).²²⁵ The amount of stock shall be not less than two thousand nor more than ten million dollars.²²⁶

²²³ *Ibid.* § 836.

²²⁴ *Ibid.* § 838.

²²⁵ Mo. Rev. Stat. § 1319.

²²⁶ *Ibid.* § 1320.

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"The articles of agreement shall set out; First, the corporate name of the proposed corporation, which shall not be the name of any corporation heretofore incorporated in this state for similar purposes, or an imitation of such name; second, the name of the city or town and county in which the corporation is to be located; third, the amount of the capital stock of the corporation, the number of shares into which it is divided, and the par value thereof, that the same has been *bona fide* subscribed, and one-half thereof actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors or managers; fourth, the names and places of residence of the several shareholders, and the number of shares subscribed by each; fifth, the number of the board of directors or managers, and the names of those agreed upon for the first year; sixth, the number of years the corporation is to continue, which in no case shall exceed fifty years; seventh, the purposes for which the corporation or company is formed: *Provided*, that if upon organizing a corporation under this article it is desired that any portion of the stock shall be preferred, the articles shall further set out the amount of such preferred stock, the number of shares thereof, the names of the subscribers therefor, the number of shares of such stock subscribed by each subscriber therefor, and the preferences, priorities, classifications and character thereof."²²⁷ These articles are signed and acknowledged by all the parties, recorded in the office of the recorder of deeds in the county or city where the corporation is to be located, and a certified copy filed in the office of the Secretary of State. Any subsequent amendment shall be recorded and filed in the same way.²²⁸ The corporation is legally formed and continues for not more than fifty years from the Secretary's certificate of the filing of the articles.²²⁹ The first meeting is called by notice signed by a subscriber

²²⁷ *Ibid.* § 1312.

²²⁸ *Ibid.* § 1313.

²²⁹ *Ibid.* § 1314.

to the articles and personally served or published in a local newspaper seven days before the meeting.²³⁰ Corporations are granted the ordinary powers,²³¹ but it is provided in the constitution that "No corporation shall engage in business other than that expressly authorized in its charter or the law under which it may have been or hereafter may be organized, nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business."²³²

§ 36. Montana.

Corporations may be formed by the voluntary association of any three or more persons²³³ for the following purposes of profit: insurance, banking, trust and investment companies, various public services, and "The transaction of any mercantile, commercial, industrial, manufacturing, mining, mechanical or chemical business; The transaction of a printing and publishing business; The erection of buildings and the accumulation and loan of funds for the purchase of real estate; The establishment and maintenance of a hotel; The improvement of the breed of domestic animals by importation, sale or otherwise; The transaction of the business of raising, buying and selling cattle, horses and sheep; or, The construction of canals, ditches, flumes and other works for conveying water and reservoirs for storing the same, and the boring of artesian wells."

But a corporation can be formed for no purpose not specified.²³⁴ The articles of incorporation must state the name, purpose and location of the corporation, the term for which it is to exist (not more than twenty years), the number of directors (three to thirteen) and the names and residences of

²³⁰ *Ibid.* § 944.

²³¹ *Ibid.* § 971.

²³² Mo. Const. Art. 12, § 7.

²³³ Mont. Civ. Code, § 392.

²³⁴ *Ibid.* §§ 393, 604.

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those first appointed, the amount of capital stock and number of shares, and if there is a capital stock the amount actually subscribed and by whom. If the stock is assessable it must be so stated.²³⁵ These articles must be subscribed and acknowledged, filed in the office of the county clerk and a certified copy with the Secretary of State; and the corporation is then legally formed.²³⁶ A copy of the articles must be filed in every county in which the corporation holds property.²³⁷ The ordinary powers are granted,²³⁸ but no corporation shall create or issue bills, notes, or other evidence of debt, upon loans or otherwise, for circulation as money.²³⁹ The stock-book is open to the inspection of any stockholder or creditor.²⁴⁰

§ 37. Nebraska.

Any number of persons may be incorporated for the transaction of any lawful business.²⁴¹ The articles of incorporation, which must be filed with the Secretary of State and with the county clerk of the county where their headquarters are located²⁴² must fix the highest amount of indebtedness or liability to which the corporation shall at any one time be subject, which must in no case exceed two-thirds of the capital stock.²⁴³ Notice must be published in a newspaper near the principal place of business for four weeks.²⁴⁴ As soon as the articles are filed with the county clerk the corporation may begin business; but the filing with the Secretary of State and publication must take place within four months.²⁴⁵

²³⁵ *Ibid.* § 403.

²³⁶ *Ibid.* § 405.

²³⁷ *Ibid.* § 409.

²³⁸ *Ibid.* § 520.

²³⁹ *Ibid.* § 522.

²⁴⁰ *Ibid.* § 541.

²⁴¹ Neb. Comp. Stat. § 1826.

²⁴² *Ibid.* § 1829.

²⁴³ *Ibid.* § 1831.

²⁴⁴ *Ibid.* § 1833.

²⁴⁵ *Ibid.* § 1835.

Changes must be published in the same way;²⁴⁶ and notice of the indebtedness of the corporation must be published annually.²⁴⁷

§ 38. Nevada.

Three or more persons may be incorporated "for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose" except to carry on within the State an insurance business or that of a surety company or a railroad company (other than a street railway).²⁴⁸ But the excepted companies may be formed to operate wholly outside the State, provided they do not infringe the laws of the place where they are to transact business.²⁴⁹ The organization is effected by signing and acknowledging articles of incorporation, filing them in the office of the County Clerk where the principal business is to be carried on, and filing a certified copy with the Secretary of State.²⁵⁰

The articles of incorporation shall contain the following:²⁵¹

1. "The name of the corporation (which name shall end with the word 'incorporated,' or shall contain one of the following words, used therein as a substantive or noun, 'association,' 'company,' 'corporation,' 'club,' 'society,' or 'syndicate') and shall be such as to distinguish it from any other formed or incorporated in this State or engaged in the same business, or promoting or carrying on the same objects or purposes in this State." 2 and 3. Location and nature of the business.
4. "The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars; the number of shares into which the same is divided, and the par value of each share; the amount of subscribed capital stock with which it will commence business, which

²⁴⁶ *Ibid.* § 1836.

²⁴⁷ *Ibid.* § 1839.

²⁴⁸ Nev. 1903, ch. 121, § 1.

²⁴⁹ *Ibid.* § 2.

²⁵⁰ *Ibid.* § 3.

²⁵¹ *Ibid.* § 4.

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shall not be less than one thousand dollars; the amount actually subscribed and the amount actually paid up if any; and if there be more than one class of stock created by the certificate of incorporation, a description of the different classes with the terms on which the respective classes of stock are created, and the amount of each class subscribed and amount paid thereon." 5. Names and addresses of subscribers and amounts subscribed. 6. Period of duration. 7. Number (not less than three) and name of directors or trustees. 8. "Whether or not capital stock, after the amount of the subscription price or par value has been paid in, shall be subject to assessment to pay debts of the corporation, and, unless provision is made in such original certificate or articles of incorporation for assessment upon paid up stock, no paid up stock and no stock issued as fully paid up shall ever be assessable or assessed, and the articles of incorporation shall not be amended in this particular. 9. The certificate or articles of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation and the rights, powers or duties of the Directors, the stockholders, or any classes of the stockholders, or holders of the bonds or other obligation of the corporation, or providing for governing the distribution or division of the profits of the said corporation; *provided*, such provisions are not contrary to the laws of this State." Corporate existence begins when the certificate is issued by the Secretary of State upon filing the articles.²⁵²

The ordinary powers are granted, and in addition "to conduct business in this State, other States, the District of Columbia, the Territories, Districts, Dependencies and Colonies of the United States and in foreign countries, and have one or more officers out of this State, and to buy or otherwise obtain, hold, purchase, mortgage and convey real and per-

²⁵² *Ibid.* § 5.

sonal property within or out of this State, to issue its bonds, debentures or other securities and hypothecate its franchises and property of any kind as security therefor;" ²⁵³ but no corporation so formed shall exercise banking powers. ²⁵⁴ Powers expressly given in the charter and necessary incidental powers may also be exercised. ²⁵⁵ Amendments made by two-thirds vote must be filed like the original articles. ²⁵⁶ The list of stockholders is open to inspection by stockholders or State officers. ²⁵⁷

§ 39. New Hampshire.

Five or more persons of lawful age may form a corporation for "The carrying on of any lawful business except banking, life insurance, the making of contracts for the payment of money at a fixed date or upon the happening of some contingency, and the construction and maintenance of railroads," and "any other lawful purpose not prohibited" by the provisions of the chapter. ²⁵⁸ "The articles of association shall set forth the name of the corporation, the object for which it is established, the place in which its business is to be carried on, and the amount of its capital stock, if any; and shall be signed by the persons who associate together to form it, with a designation of the post-office address of each." ²⁵⁹ "Any corporate name may be assumed which is not in use by any other corporation or company." ²⁶⁰ "The articles of agreement shall be recorded in the office of the clerk of the town in which the business of the corporation is to be carried on and in the office of the secretary of state; and when so recorded, and the charter fee required by law, if any, has been paid to the state treasurer, the signers thereof shall be a corporation,

²⁵³ *Ibid.* § 7.

²⁵⁴ *Ibid.* § 8.

²⁵⁵ *Ibid.* § 9.

²⁵⁶ *Ibid.* § 40.

²⁵⁷ *Ibid.* § 58.

²⁵⁸ N. H. Pub. Stat. ch. 147, § 1.

²⁵⁹ *Ibid.* § 2.

²⁶⁰ *Ibid.* § 3.

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and such corporation, its officers and stockholders, shall have all the rights and powers and be subject to all the duties and liabilities of other similar corporations, their officers and stockholders, except so far as the same are limited or enlarged by this chapter."²⁶¹ Amendments may be made by a majority vote, the change being recorded like the original articles.²⁶² The capital stock shall be not less than one thousand nor more than one million dollars, divided into shares of not less than twenty-five nor more than five hundred dollars each.²⁶³

The ordinary powers are granted²⁶⁴ and the following limitations placed on their powers: "They may make contracts necessary and proper for the transaction of their authorized business, and no other; they shall not be capable of binding themselves as sureties or guarantors for others."²⁶⁵ "They may purchase, hold, and convey real and personal estate necessary and proper for the due transaction of their authorized business, not exceeding the amount authorized by their charter or by statute, and no other."²⁶⁶ "They may take mortgages or pledges or make attachments of any property to secure the payment of debts due to them, and may perfect a title thereto by proper legal proceedings; but they shall sell or dispose of any property so obtained, which they are not authorized to hold, within five years after the title is perfected."²⁶⁷ Every corporation shall have an inhabitant of the State as clerk, and he shall keep his office in the State.²⁶⁸

§ 40. New Jersey.

"Three or more persons may become a corporation for any lawful purpose or purposes whatever other than a savings bank,

²⁶¹ *Ibid.* § 4.

²⁶² N. H. 1895, ch. 1, § 2.

²⁶³ N. H. Pub. Stat. ch. 147, § 6.

²⁶⁴ *Ibid.* ch. 148, § 3.

²⁶⁵ *Ibid.* § 7.

²⁶⁶ *Ibid.* § 8.

²⁶⁷ *Ibid.* § 9.

²⁶⁸ *Ibid.* § 10.

a building and loan association, an insurance company, a surety company, a railroad company, a telegraph company, a telephone company, a canal company, a turnpike company or other company which shall need to possess the right of taking and condemning lands in this state, or other than a corporation provided for by 'An Act concerning banks and banking (Revision of 1899),' or by 'An Act concerning trust companies (Revision of 1899),' or by 'An Act concerning safe-deposit companies (Revision of 1899)'; it shall, however, be lawful to form a company hereunder for the purpose of constructing, maintaining and operating railroads, telephone or telegraph lines outside of this state."²⁶⁹ It is held that where an act has been passed for the creation of corporations of a certain sort (gas companies, water companies, street railways and traction companies in addition to those named in the statute) such a corporation cannot be formed under the general law.²⁷⁰

A corporation so formed "may conduct business in other states or in foreign countries and have one or more officers out of this state, and may hold, purchase, mortgage and convey real and personal property out of this state; *provided*, such powers are included within the objects set forth in its certificate of incorporation."²⁷¹

The certificate of incorporation shall be signed in person by all the subscribers to the capital stock, and shall set forth: 1. The name of the corporation; no name shall be assumed already in use by another existing corporation of this state, or so nearly similar thereto as to lead to uncertainty or confusion;²⁷² 2 & 3. The location of the principal office, and the objects of the corporation;²⁷³ 4. The amount of the total au-

²⁶⁹ N. J. Corp. Supp. § 6.

²⁷⁰ Richards v. Dover, 61 N. J. Law, 400.

²⁷¹ N. J. Corp. Supp. § 7.

²⁷² No corporation shall use the words "insurance," "safe deposit" or "trust company," or "bank," as part of its name. N. J. P. L. 1897, p. 274.

²⁷³ The powers of the corporation cannot be enlarged by the by-laws. Stewart v. Odd Fellows' Mut. Life Ins. Co., 12 N. J. L. J. 110. It is therefore desirable not to define the objects of the corporation too narrowly.

thorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares into which the same is divided and the par value of each share; the amount of capital stock with which it will commence business, which shall not be less than one thousand dollars and, if there be more than one class of stock created by the certificate of incorporation, a description of the different classes, with the terms on which the respective classes of stock are created; 5. The names and post office addresses of the incorporators²⁷⁴ and the number of shares subscribed for by each; the aggregate of such subscriptions shall be the amount of capital stock with which the company will commence business, and shall be at least one thousand dollars; 6. The period, if any, limited for the duration of the company. 7. The certificate of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stockholders; *provided*, such provision be not inconsistent with this act.²⁷⁵

The certificate of incorporation is acknowledged and recorded in the office of the clerk of the county where the principal office of the corporation in the State is established, and also filed in the office of the Secretary of State.²⁷⁶ Corporate existence begins upon the filing of the certificate.²⁷⁷ Amendments of any nature may be made by a two-thirds vote, recorded and filed like the original certificate.²⁷⁸

"Any corporation of this state, except railroad and canal corporations, may hereafter, with the assent of two-thirds in interest of its stockholders, either in person or by proxy, lease

²⁷⁴ It is not necessary that any of them should be resident of the State. *Central R. R. v. Pennsylvania R. R.*, 31 N. J. Eq. 475.

²⁷⁵ *Ibid.* § 8.

²⁷⁶ *Ibid.* § 9.

²⁷⁷ *Ibid.* § 10.

²⁷⁸ *Ibid.* § 27.

its property and franchises to any corporation, and every corporation of this state is hereby authorized to take the lease or any assignment thereof, for such terms and upon such conditions as may be agreed upon, and any such lease or assignment, or both, heretofore made, are hereby validated; *provided, however*, that nothing herein contained shall be construed to authorize any corporation which is now specifically prohibited by law or by its certificate of incorporation from leasing its property or franchises to do so, nor to authorize the leasing by any corporation without the consent of the legislature, when such consent is now specially required by any law of this state.” ²⁷⁹

An annual report of condition is required. ²⁸⁰

Corporations are granted the usual powers, including power “to hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, and all other real estate which shall have been *bona fide* conveyed or mortgaged to the said corporation by way of security, or in satisfaction of debts, or purchased at sales upon judgment or decree obtained for such debts; and to mortgage any such real or personal estate with its franchises; the power to hold real and personal estate shall include the power to take the same by devise or bequest,” ²⁸¹ and in addition the powers specified in the certificate of incorporation; and no corporation shall possess other powers, “except such incidental powers as shall be necessary to the exercise of the powers so given.” ²⁸² “Power necessary to a corporation does not mean simply power which is indispensable . . . a power which is obviously appropriate and convenient to carry into effect the franchise granted has always been deemed a necessary one. . . . In short, the term comprises a grant of the right to use all the means suitable and proper to accomplish the end which the

²⁷⁹ N. J. P. L. 1899, p. 334.

²⁸⁰ N. J. Corp. Supp. § 43.

²⁸¹ *Ibid.* § 1.

²⁸² *Ibid.* § 2.

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Legislature had in view at the time of the enactment of the charter." ²⁸³ Banking powers are prohibited.²⁸⁴

§ 41. New Mexico.

Corporations may be formed under the general law "for mining, manufacturing or other industrial . . . or other lawful pursuits," ²⁸⁵ and "to acquire, hold, improve, develop and manage any hot, mineral or other sanitary spring, or to lay off land into town sites, blocks, lots, streets, alleys, avenues, commons and parks, and to acquire, hold, colonize, improve and sell lands in connection with any or all of said objects." ²⁸⁶

Any three or more persons may make, sign and acknowledge articles of incorporation, which are filed with the Secretary of the Territory and a copy in the office of the probate clerk in the county where the principal place of business is located. This document shall set forth "the full names of such persons, the corporate name of the company, the objects for which the company shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the stock shall consist, the number of directors and their names, who shall manage the concerns of the company for the first three months, and the name of the city or town and county in which the principal place of business of the company is to be located." ²⁸⁷ The corporate existence begins when the certificate is filed and the ordinary powers are granted to the corporation.²⁸⁸

Amendments to the articles may be made by a two-thirds vote of the stockholders,²⁸⁹ and filed in the same way as the

²⁸³ *State R. R. v. Hancock*, 35 N. J. L. 537; and see *Ellerman v. Chicago Junction Ry.*, 49 N. J. Eq. 217, 241, 23 Atl. 287.

²⁸⁴ N. J. Corp. Supp. § 3.

²⁸⁵ N. Mex. Comp. L. §§ 411, 413.

²⁸⁶ *Ibid.* § 414.

²⁸⁷ *Ibid.* § 415.

²⁸⁸ *Ibid.* § 417.

²⁸⁹ *Ibid.* § 432.

original articles.²⁹⁰ Business must begin within two years of incorporation.²⁹¹

“Whenever any persons shall have formed themselves into an incorporation according to the provisions of this act, it shall not be lawful for any other persons to become incorporated under the same name or designation, nor for the same immediate purpose. This last provision shall not apply to mining, mechanical or manufacturing operations.”²⁹²

A book containing the names and residences of the stockholders shall be kept, open to the inspection of stockholders and creditors and their personal representatives.²⁹³

§ 42. New York.

Three or more persons may become a corporation for any lawful business purpose or purposes other than a moneyed corporation, or a corporation provided for by the banking, the insurance, the railroad and the transportation corporation laws.²⁹⁴ These must be natural persons of full age (unless the corporation is formed by the reincorporation or consolidation of existing companies), at least two-thirds of them citizens of the United States, and one of them a resident of New York.²⁹⁵ The incorporators must sign and acknowledge a certificate containing the name and purpose of the corporation, the amount of stock, and whether any is preferred, the number of shares (business not to begin till the capital amounts to five hundred dollars, and the par value of the shares to be from five to one hundred dollars), the location and duration, the number of directors (not less than three), the names and addresses of the directors for the first year, and the names and addresses of the subscribers, with the number of shares which each agrees to take. “The certificate may contain any other

²⁹⁰ *Ibid.* § 433.

²⁹¹ *Ibid.* § 436.

²⁹² *Ibid.* § 438.

²⁹³ *Ibid.* § 451.

²⁹⁴ N. Y. Business Corp. L. § 2.

²⁹⁵ N. Y. Gen. Corp. L. § 4.

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provision for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon its powers and upon the powers of its directors and stockholders which does not exempt them from any obligation or from the performance of any duty imposed by law.”²⁹⁶

“No certificate of incorporation of a proposed corporation having the same name as a corporation authorized to do business under the laws of this State, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation, or of authorizing it to do business in this State. A corporation formed by the reincorporation, reorganization or consolidation of other corporations or upon the sale of the property or franchises of a corporation may have the same name as the corporation or one of the corporations to whose franchises it has succeeded. No corporation shall be hereafter organized under the laws of this State with the word trust, bank, banking, insurance, assurance, indemnity, guarantee, guaranty, savings, investment, loan or benefit as part of its name, except a corporation formed under the banking law or the insurance law.”²⁹⁷ Provisions are made for a change of name.²⁹⁸

Every certificate of incorporation or amendment thereto shall be filed with the Secretary of State, and a duplicate in the office of the clerk of the county where the corporation is to be located.²⁹⁹ No corporation shall incur debts until the amount of capital specified in the articles as the amount with which it will begin business has been paid in.³⁰⁰

No corporation shall possess any powers not given by law, or not necessary to the exercise of the powers so given.³⁰¹ The ordinary powers are granted.³⁰² Any domestic corpora-

²⁹⁶ N. Y. Business Corp. L. § 2.

²⁹⁷ N. Y. Gen. Corp. L. § 6.

²⁹⁸ N. Y. Co. Civ. Proc. § 2410 *et seq.*

²⁹⁹ N. Y. Gen. Corp. L. § 5.

³⁰⁰ N. Y. Bus. Corp. L. § 4.

³⁰¹ N. Y. Gen. Corp. L. § 10.

³⁰² *Ibid.* § 11.

tion transacting business in other States or foreign countries may acquire and dispose of such property as shall be requisite for such corporation in the convenient transaction of its business.³⁰³ No banking powers may be exercised by a business corporation.³⁰⁴ It has power "to borrow money and contract debts when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; and it may issue and dispose of its obligations for any amount so borrowed, and may mortgage its property and franchises to secure the payment of such obligations, or of any debt contracted for said purposes." ³⁰⁵

§ 43. North Carolina.

Three or more persons "desirous of engaging in any business, or of forming any company, society or association whatever, not unlawful, except railroads, other than street railways or banking or insurance," shall be incorporated as follows: They shall by a certificate of incorporation under their hands and seals, set forth "(1) The name of the corporation; no name shall be assumed already in use by another existing corporation of this State, or so nearly similar thereto as to lead to uncertainty or confusion; and shall end either with the word 'Company,' or the word 'incorporated.' " (2 & 3) The location of its principal office in the State and the object or objects for which it is formed. (4) "The amount of the total authorized capital stock of the corporation, the number of shares into which the same is divided, and the par value of each share; the amount of capital stock with which it will commence business, and, if there be more than one class of stock, a description of the different classes, with the terms on which the respective classes of stock are created." (5) Names and addresses of the subscribers and the number of shares subscribed by each; the

³⁰³ *Ibid.* § 14.

³⁰⁴ *Ibid.* § 19.

³⁰⁵ N. Y. Stock Corp. L. § 2.

aggregate of the subscriptions being the amount of capital stock with which the company will commence business. (6) The duration of the company. (7) "The certificate of incorporation may also contain any provision which the incorporators may chose to insert for the regulation of the business, and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stockholders: *Provided*, such provisions be not inconsistent with the laws of this State." ³⁰⁶

The certificate shall be signed and acknowledged by a majority of the incorporators and filed in the office of the Secretary of State; and a certified copy recorded in the office of clerk of the Superior Court of the county where the principal office is located.³⁰⁷ The corporate existence begins upon filing the certificate in the office of Secretary of State.³⁰⁸ A corporation may change its name, the nature of its business, the amount of capital stock and par value of the shares, extend its corporate existence, etc., by a two-thirds vote, the change being recorded like the original certificate.³⁰⁹ The place of business may be changed, and the extent of the business altered (within the provisions of the act) by the same method.³¹⁰

The ordinary powers are granted, including the power to conduct business abroad, and have one or more officers out of the State.³¹¹ Conveyances and mortgages of its property are subject to claims of laborers and of persons injured by torts of the corporation.³¹² Banking powers are denied.³¹³ The corporation has the powers specially granted in its charter, in addition to those conferred by the general law, and no other

³⁰⁶ N. Car. 1901, ch. 2, § 8.

³⁰⁷ *Ibid.* § 9.

³⁰⁸ *Ibid.* § 10.

³⁰⁹ *Ibid.* § 29.

³¹⁰ *Ibid.* §§ 30, 31.

³¹¹ *Ibid.* § 1.

³¹² *Ibid.* §§ 2, 3.

³¹³ *Ibid.* § 5.

powers "except such incidental powers as shall be necessary to the exercise of the powers so given." ³¹⁴

§ 44. North Dakota.

Three or more persons may associate ³¹⁵ to form a corporation for any purpose for which individuals may lawfully associate themselves. ³¹⁶

The articles of incorporation must set forth: 1. The name of the corporation. 2. The purpose for which it is formed. 3. The place where its principal business is to be transacted. 4. The term for which it is to exist. 5. The number of its directors or trustees and the names and residences of those who are to serve until their successors are elected and qualified. 6. If there is a capital stock, its amount and the number of shares into which it is divided. ³¹⁷ The articles must be subscribed by three or more persons, one-third of whom must be residents of this State, and acknowledged by each before some officer authorized to take acknowledgments of conveyances of real property. ³¹⁸ Upon the filing of the articles of incorporation with the Secretary of State he shall issue to the corporation over the great seal of the State a certificate that the articles containing the required statement of facts have been filed in his office, and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate by the name and for the purposes stated in said articles. ³¹⁹

The ordinary powers are enumerated and granted, and no corporation is allowed to possess any powers not expressly granted "except such as are necessary to the exercise of the powers enumerated and given." ³²⁰

³¹⁴ *Ibid.* § 4.

³¹⁵ N. Dak. Rev. Code, § 2858.

³¹⁶ *Ibid.* § 2856.

³¹⁷ *Ibid.* § 2861.

³¹⁸ *Ibid.* § 2864.

³¹⁹ *Ibid.* § 2868.

³²⁰ *Ibid.* § 2882.

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Amendments may be made by a two-thirds vote, the change being filed like the original articles.³²¹

A book containing the name and address of every stockholder is open to the inspection of every stockholder and creditor.³²²

§ 45. Ohio.

Five or more persons, a majority of them citizens of the State, may sign and acknowledge articles of incorporation, containing the name of the corporation, which shall begin with the word "The" and end with the word "Company," its location and purpose, the amount of its capital stock and the number of shares.³²³ Corporations may be formed "for any purpose for which individuals may lawfully associate themselves, except for carrying on professional business;" but a corporation formed for buying and selling real estate shall last but twenty-five years.³²⁴ The articles shall be filed with the Secretary of State; but he shall not file articles "in which the name of the corporation is the same as one already adopted or appropriated by an existing corporation of this State or so similar to the name of such existing corporation as to be likely to mislead the public, unless the written consent of such prior existing corporation, signed by its president and secretary, be at the same time filed with such articles of incorporation."³²⁵ Amendments may be made by a three-fifths vote of the stockholders, filed like the original certificate.³²⁶

The corporate existence begins when the articles are filed.³²⁷ An annual statement of condition is furnished to the stockholders which contains the names and addresses of each stockholder.³²⁸

³²¹ *Ibid.* §§ 2908-2911.

³²² *Ibid.* § 2907.

³²³ Ohio Stat. § 3236.

³²⁴ *Ibid.* § 3235.

³²⁵ *Ibid.* § 3238.

³²⁶ *Ibid.* § 3238 a.

³²⁷ *Ibid.* § 3239.

³²⁸ *Ibid.* § 3268.

§ 46. Oklahoma.

"Private corporations can be formed by the voluntary association of three or more persons, upon complying with the provisions of this chapter, for the following purposes, namely: Mining, manufacturing and other industrial pursuits, the construction or operation of railroads, wagon roads, electric street railways, electric light power, or gas plants, water-works, irrigating ditches, for colleges, seminaries, churches, libraries, benevolent, charitable and scientific associations, for conducting the business of insurance, banks of discount and deposit (but not of issue) and for loan, trust and guarantee associations. Provided, however, That no insurance company shall be incorporated under the provisions of this act, except by the voluntary association of seven or more persons."³²⁹

Articles of incorporation must be prepared containing the name, purpose, location, and term of duration of the corporation, number of directors with the names and addresses of those which are to serve first, and their qualifications; and the amount of capital stock and number of shares.³³⁰ The articles must be subscribed by three or more persons, one-third of them residents of the Territory;³³¹ they are then filed with the Secretary of the Territory, and he issues a certificate of incorporation; whereupon corporate existence begins.³³² Corporations are given the ordinary express and implied powers.³³³ A stock book is kept, showing the name and address of every stockholder; and this is open to the inspection of every member and creditor.³³⁴

§ 47. Oregon.

Three or more persons may be incorporated "for the purpose of engaging in any lawful enterprise, business, pursuit or

³²⁹ Okl. Stat. § 941.

³³⁰ *Ibid.* § 943.

³³¹ *Ibid.* § 946.

³³² *Ibid.* § 947.

³³³ *Ibid.* § 961.

³³⁴ *Ibid.* § 979.

occupation.”³³⁵ They sign and acknowledge articles, which they file with the Secretary of State and with the clerk of the county where the business is to be carried on.³³⁶ The articles shall state the name assumed by the corporation, the duration, the enterprise, business, pursuit, or occupation thereof, the location of its principal office, the amount of capital stock and of each share of stock.³³⁷ The corporate existence begins when the articles are filed, and the ordinary powers are granted.³³⁸

“Whenever there shall be presented to the Secretary of State for filing any articles of incorporation in which the name assumed by the proposed corporation shall appear to said Secretary of State to resemble the name of a corporation previously formed under the laws of this state so closely as to be likely to cause confusion, then the Secretary of State may require, before filing such articles, that the name of the proposed corporation shall be so changed as to avoid such confusion.”³³⁹

A stock-book is kept, in which the names of the original shareholders, the amounts due thereon, and all transfers appear; and this book is subject to the inspection “of any person interested therein and applying therefor.”³⁴⁰

§ 48. Pennsylvania.

Three or more persons may form a corporation, of whom two or more must sign the charter, one of them at least being a citizen of Pennsylvania.³⁴¹ The purposes for which the corporation may be formed are minutely enumerated; the statute among others naming the following:³⁴² The transaction

³³⁵ Or. Misc. L. § 3217.

³³⁶ *Ibid.* § 3218.

³³⁷ *Ibid.* § 3220.

³³⁸ *Ibid.* § 3221.

³³⁹ Or. 1903, p. 41, § 2.

³⁴⁰ Or. Misc. L. § 3228.

³⁴¹ Pa. P. L. 1901, p. 328.

³⁴² Pa. P. L. 1874, p. 73, § 2.

of any business in which electricity, over or through wires, may be applied to any useful purpose; ³⁴³ the supply of water ³⁴⁴ and ice; ³⁴⁵ the manufacture and supply of gas or supply of light, heat or power, by electricity or other means; ³⁴⁶ the transaction of a printing or publishing business, the creating, purchasing, holding and selling patent rights and copyrights; ³⁴⁷ "for the purchase and sale of real estate, or for holding, leasing, or selling real estate, for maintaining or erecting walls or banks for the protection of low-lying lands, and for safe-deposit companies, and for buying, selling, vending or dealing in any kind or kinds of goods, wares and merchandise at wholesale;" ³⁴⁸ the manufacture of iron, steel or other metal, or wood, or works of ornament and art, and the buying and selling of such articles; ³⁴⁹ carrying on of any mechanical, mining, quarrying or manufacturing business, grain elevators, storage houses, water power, log-drives, petroleum pipe-line companies, and "companies for the transaction of any lawful business not otherwise specifically provided for by act of Assembly;" provided no corporation under this last amendment shall be chartered with authority to transact more than one kind of business, which must be set forth in the charter. ³⁵⁰

The charter must set out the name, purpose, location and term of the corporation, names and addresses of subscribers and number of shares of each, number of directors and names and addresses of those for the first year, and amount of capital stock and par value of the shares. Ten per cent. of the capital stock must be paid in. Notice of intention to apply for incorporation is published for three weeks in a newspaper, the

³⁴³ As amended, P. L. 1885, p. 164.

³⁴⁴ As amended, P. L. 1887, p. 186.

³⁴⁵ As amended, P. L. 1895, p. 253.

³⁴⁶ As amended, P. L. 1889, p. 136.

³⁴⁷ As amended, P. L. 1889, p. 241.

³⁴⁸ As amended, P. L. 1895, p. 295.

³⁴⁹ As amended, P. L. 1893, p. 287.

³⁵⁰ As amended, P. L. 1901, p. 624.

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charter is then submitted to the governor, and if he approves letters patent issue incorporating the association. These are recorded in the office of the Secretary of the Commonwealth, and in the office for the recording of deeds in the county where the business is to be carried on. Corporate existence then begins.³⁵¹ The corporation must begin business and pay up at least one-fourth of the capital stock within two years.³⁵² Amendments may be made by the same formalities as those of granting the original charter; but the objects of the corporation shall not be changed.³⁵³ The ordinary powers are granted.³⁵⁴ "No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate, except such as may be necessary and proper for its legitimate business."³⁵⁵

§ 49. Rhode Island.

"Any three or more persons of lawful age who shall associate by written articles which shall express: *First.* Their agreement to constitute an ordinary business corporation; *Second.* The name by which it shall be known, which shall be one that cannot be mistaken for that of a copartnership, and which name is not then in use by any existing corporation incorporated by special act or under the general laws of this state; *Third.* The business for which it is constituted; *Fourth.* The town or city in which it is to be located; *Fifth.* The amount of the capital stock, and whether common or preferred, and how much of each, and the par value of each share, and, if preferred, the advantages thereof over the common stock, shall, upon complying with the requirements hereinafter provided, be and become a corporation for the transaction of the business named in said articles of agreement: Provided, however,

³⁵¹ Pa. P. L. 1874, p. 73, § 3.

³⁵² Pa. P. L. 1883, p. 123, § 5.

³⁵³ Pa. P. L. 1883, p. 123, §§ 2-4.

³⁵⁴ Pa. P. L. 1874, p. 73, § 1.

³⁵⁵ Pa. Const. Art. 16, § 5.

that nothing herein contained shall authorize the formation of any municipal or *quasi*-municipal corporation, railway company, canal company, turnpike company, or of any company which shall need to possess the right to take or condemn lands or other property under the power of eminent domain, or to acquire franchises in the streets or highways of towns or cities, or of any insurance company, bank or banking corporation, savings bank, trust company, or any other corporation trading in bonds, notes, or other evidences of indebtedness, in any manner other than is hereinafter provided." ³⁵⁶

"Said corporators shall sign said agreement stating their residences against their names, shall acknowledge the same in the manner in which deeds of real estate are required to be acknowledged within this state, and shall file the same in the office of the secretary of state, together with the certificate of the general treasurer that said corporators have paid into the treasury for the use of the state the sum of one hundred dollars; or if the capital stock of said corporation is to be one hundred thousand dollars, or more, have paid into the treasury a sum equal to one-tenth of one per centum of said capital stock." ³⁵⁷ The agreement is filed in the office of the Secretary of State, who thereupon issues a certificate of incorporation; ³⁵⁸ and the corporate existence then begins, and the corporation has power to transact business. ³⁵⁹ Amendments may be made by a three-quarters vote of the stockholders, and filed like the original agreement. ³⁶⁰ The ordinary powers are granted. ³⁶¹

§ 50. South Carolina.

Two or more persons may form a corporation for any pur-

³⁵⁶ R. I. Gen. L. ch. 176, § 2.

³⁵⁷ *Ibid.* § 3.

³⁵⁸ *Ibid.* § 4.

³⁵⁹ *Ibid.* § 5.

³⁶⁰ *Ibid.* § 7.

³⁶¹ R. I. Gen. L. ch. 177, § 1.

pose or purposes (except municipal, railroad, tramway, turnpike and canal corporations) by filing with the Secretary of State a petition, setting out the names and residences of the petitioners, the name, location, and nature of the business of the proposed corporation, the amount of capital stock, and how and when payable, and the number of shares, and any other matter which it may be desirable to insert.³⁶² The Secretary then issues a commission constituting the petitioners a Board of Corporators and authorizing them to open books of subscription.³⁶³ All subscriptions shall be payable in money or in labor or property at its money value.³⁶⁴ When not less than fifty per cent. of the proposed capital stock has been subscribed by *bona fide* subscribers, the corporation may be organized.³⁶⁵ And upon payment to the treasurer of at least twenty per cent. of the aggregate amount of the capital subscribed in money and the delivery of at least twenty per cent. of the property subscribed, this shall be certified by the corporators to the Secretary of State, who shall then issue the charter. The stock may be paid by installments, in which case the charter will be issued upon payment of fifty per cent. of the first installment.³⁶⁶ No irregularity in complying with the provisions of this article shall vitiate the incorporation, except upon direct proceedings by the State.³⁶⁷ There is no limit of time upon the continuance of a corporation.³⁶⁸ The books of a corporation shall be open to the inspection of any stockholder.³⁶⁹ The ordinary powers are granted,³⁷⁰ but no corporation shall emit bills of credit.³⁷¹

³⁶² S. Car. Civ. Code, § 1880.

³⁶³ *Ibid.* § 1881.

³⁶⁴ *Ibid.* § 1882.

³⁶⁵ *Ibid.* § 1883.

³⁶⁶ *Ibid.* § 1884.

³⁶⁷ *Ibid.* § 1885.

³⁶⁸ *Ibid.* § 1891.

³⁶⁹ *Ibid.* § 1897.

³⁷⁰ *Ibid.* §§ 1848, 1893.

³⁷¹ *Ibid.* § 1864.

§ 51. South Dakota.

Three or more persons may form a corporation for mining, manufacturing, mechanical, quarrying, and other industrial pursuits, and for any other lawful business; railroads, insurance, banks of discount and deposit (but not of issue) and loan, trust and guaranty associations. To form a corporation for insurance at least seven incorporators are necessary.³⁷² The articles must set forth the name, purpose, location and duration of the corporation, the number of directors with the names and addresses of the first board, and the amount of capital stock and number of shares.³⁷³ Of the three or more subscribers, one-third at least must be residents. The articles are signed and acknowledged.³⁷⁴ They are then filed with the Secretary of State, and the corporate existence then begins.³⁷⁵ The ordinary powers are granted.³⁷⁶ Amendments may be adopted to "modify or enlarge its business or purposes" or change the articles in other respects by a two-thirds vote of the stockholders, filed like the original articles.³⁷⁷ No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business.³⁷⁸ The duration of the corporation is unlimited.³⁷⁹

Any corporation formed for mining, manufacturing or other industrial pursuits may provide in the articles of incorporation for having a business office without the State at any place within the United States, and meetings of the stockholders and directors may be held at such office; but every such corporation having a business office out of this State must have

³⁷² S. D. Stat. (1901) Civ. Code, § 3979.

³⁷³ *Ibid.* § 3814.

³⁷⁴ *Ibid.* § 3816.

³⁷⁵ *Ibid.* § 3817.

³⁷⁶ *Ibid.* § 3837.

³⁷⁷ S. D. 1903, ch. 106.

³⁷⁸ S. Dak. Const. Art. 17, § 7.

³⁷⁹ S. D. Civ. Code, § 4238.

its main office for the transaction of business within this State to be also designated in such articles.³⁸⁰

§ 52. Tennessee.

Five or more persons may apply for a charter of incorporation for any purposes mentioned.³⁸¹ These include companies for owning, improving and selling real estate,³⁸² and carrying on mercantile business,³⁸³ banks and trust companies,³⁸⁴ building associations,³⁸⁵ electric light and power and telephone companies,³⁸⁶ gas companies,³⁸⁷ insurance companies,³⁸⁸ mining, quarrying, boring and manufacturing companies,³⁸⁹ railroad companies,³⁹⁰ telegraph companies,³⁹¹ water power companies,³⁹² waterworks companies³⁹³ and water companies.³⁹⁴ The form of charter is provided by statute for the formation of each company; this is signed by the incorporators, sworn to, and registered in the county in which the principal office is and in each county where an agency is established, and also with the Secretary of State.³⁹⁵ The ordinary powers are conferred,³⁹⁶ including power to issue bonds and secure them by a mortgage of its franchises.³⁹⁷

³⁸⁰ S. D. Stat. (1901) Civ. Code, § 4213.

³⁸¹ Tenn. Code, § 2025.

³⁸² *Ibid.* § 2229.

³⁸³ *Ibid.* § 2447.

³⁸⁴ *Ibid.* §§ 2083, 2090.

³⁸⁵ *Ibid.* § 2128.

³⁸⁶ *Ibid.* § 2201.

³⁸⁷ *Ibid.* § 2205.

³⁸⁸ *Ibid.* §§ 2259, 2271.

³⁸⁹ *Ibid.* § 2330.

³⁹⁰ *Ibid.* § 2412.

³⁹¹ *Ibid.* § 2443.

³⁹² *Ibid.* § 2485.

³⁹³ *Ibid.* § 2490.

³⁹⁴ *Ibid.* § 2499.

³⁹⁵ *Ibid.* §§ 2025, 2026, 2027, 2054.

³⁹⁶ *Ibid.* §§ 2043, 2044.

³⁹⁷ *Ibid.* § 2049.

§ 53. Texas.

Three or more persons may associate to form a corporation for the following purposes:³⁹⁸ among others,³⁹⁹

(8) The construction and maintenance of a telegraph and telephone line.

(12) The supply of water to the public.

(13) The manufacture and supply of gas, and the supply of light, heat, and electric motor power, or either of them, to the public, by any means.

(14) The transaction of any manufacturing or mining business, and the purchase and sale of such goods, wares and merchandise used for such business.

(15) The transaction of a printing or publishing business, and in connection therewith, the sale of goods, wares and merchandise of a stationary and blank book manufacturing business.

(16) The establishment and maintenance of a hotel or steam laundry.

(17) The erection or repair of any building or improvement, and the accumulation and loaning of money for said purposes, and for the purchase, sale and subdivision of real property in towns, cities and villages and their suburbs not exceeding more than two miles beyond their limits; and for the accumulation and loaning of money for that purpose.

(18) The transportation of goods, wares and merchandise, or any valuable thing.

(21) For constructing or acquiring, with power to maintain and operate, street railways and suburban railways and belt lines of railway within and near cities and towns for the transportation of freight and passengers, with power also to construct, own and operate union depots; and any such company using electricity as the motive power for the operation of its lines, shall have the right and authority to supply and sell electric light and power to the public and municipalities.⁴⁰⁰

³⁹⁸ Tex. Rev. Stat. Art. 641.

³⁹⁹ *Ibid.* Art. 642.

⁴⁰⁰ Tex. 1903, ch. 44.

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(24) The purchase and sale of goods, wares and merchandise, and agricultural and farm products.

(25) For the purpose of buying and selling goods, wares and merchandise of any description, by wholesale or wholesale and retail; provided, that no corporation created under this subdivision shall be chartered with a capital stock of less than twenty thousand dollars; and provided further, that such wholesale and retail businesses shall not be conducted apart or in separate establishments.

(28) The construction or purchase and maintenance of mills, gins, cotton compresses, grain elevators, wharves, and public warehouses for the storage of products and commodities, and the purchase, sale and storage of products and commodities by grain elevators and public warehouse companies, and the loan of money by such elevator or public warehouse companies.

(29) The accumulation and loan of money; but these subdivisions shall not permit incorporations with banking or discounting privileges.

(37) Trust and surety companies.⁴⁰¹

(38) Navigation companies.

(39) For the purpose of doing business in any other State or foreign country:

a. The establishment of land companies to buy, own, sell and convey real estate and minerals and engage in mining, agriculture and stock raising.

b. Doing a general business in merchandise and manufactures.

c. The acquisition, construction, maintenance, operating and owning of power and illuminating plants, and systems of every character.

d. The acquisition, construction, maintenance, operating and owning of urban and other lines of railway and all other kinds of transportation and communication.

e. The improvement of harbors and rivers, and the acquisition, construction, ownership and operating of canals, irriga-

⁴⁰¹ Tex. 1903, ch. 127.

tion works, wharves and warehouses; and all kinds of machinery, tools and materials used for all the purposes enumerated in this subdivision; provided, that any corporation organized under the provisions of this subdivision shall only own such real estate in this State as may be necessary for its office; provided further, that for every charter granted under the provisions of this act which may include more purposes than are contained in any one paragraph of this subdivision a separate fee, or tax, shall be paid to the State of Texas for the additional purposes for which such corporation is organized under the various paragraphs of this subdivision.⁴⁰²

A charter must be prepared, setting forth: 1. The name of the corporation. 2. The purpose for which it is formed. 3. The place or places where its business is to be transacted. 4. The term for which it is to exist. 5. The number of its directors or trustees, and the names and residences of those who are appointees for the first year. 6. The amount of its capital stock, if any, and the number of shares into which it is divided.⁴⁰³ This charter must be subscribed by three or more persons, two of whom at least are citizens of Texas, and must be acknowledged.⁴⁰⁴ It is then filed in the office of the Secretary of State,⁴⁰⁵ and corporate existence then begins.⁴⁰⁶ Amendments may be made and filed in the same way.⁴⁰⁷ The duration of the corporation is limited to fifty years; or if no period is limited in the charter, to twenty years.⁴⁰⁸ The ordinary powers are granted.⁴⁰⁹ No corporation created under the provisions of this title shall employ its stock, means, assets or other property, directly or indirectly, for any other purpose

⁴⁰² The omitted purposes are either not the formation of corporations for profit, or they are apparently of local interest.

⁴⁰³ Tex. Rev. Stat. Art. 643.

⁴⁰⁴ *Ibid.* Art. 644.

⁴⁰⁵ *Ibid.* Art. 645.

⁴⁰⁶ *Ibid.* Art. 646.

⁴⁰⁷ *Ibid.* Art. 647.

⁴⁰⁸ *Ibid.* Art. 651.

⁴⁰⁹ *Ibid.* Art. 651.

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whatever than to accomplish the legitimate objects of its creation.⁴¹⁰

The stockholders of all private corporations created for profit and with an authorized capital stock, under the provisions of [the general law], shall be required to pay in at least \$100,000, in cash, of their authorized capital stock, or to subscribe at least fifty per cent. and pay in at least ten per cent. of their authorized capital, before they shall be authorized to do business in this State, and whenever the stockholders of any such company shall furnish satisfactory evidence to the Secretary of State that at least \$100,000 of its authorized capital stock has been paid in, in cash, or that at least fifty per cent. of its authorized capital has been subscribed and ten per cent. paid in, it shall be the duty of said officer to receive, file and record the charter of such company in the office of the Secretary of State upon application and the payment of all fees therefor, and to give his certificate showing the record of such charter, and authority to do business thereunder; provided, that foreign corporations obtaining permits to do business in this State shall show to the satisfaction of the Secretary of State that at least \$100,000 in cash of their authorized capital stock has been paid in, or that fifty per cent. of their authorized capital stock has been subscribed and at least ten per cent of the authorized capital has been paid in, before such permit is issued.⁴¹¹

§ 54. Utah.

Five or more persons, at least one of whom must be a resident of the State, may form a corporation "for any purpose for which individuals may lawfully associate." No corporation can take the name of a corporation theretofore organized under the laws of this State, nor of a foreign corporation having complied with the laws of this State so as to entitle it to do

⁴¹⁰ *Ibid.* Art. 665.

⁴¹¹ *Ibid.* Art. 642, cl. 56, as amended, 1901, ch. 15.

business within this State, nor one so nearly resembling the name of any such corporation as to be misleading. The Secretary of State may refuse to issue a certificate of incorporation to any association violating the provisions of this act.⁴¹²

The incorporators shall enter into an agreement in writing, signed by each of them, and sworn to by at least three of their number, as hereinafter provided, before the county clerk or any notary public of the county in which they have established or intend to establish their principal place of business, stating: 1. The name of the incorporation. 2. The precinct or city where it is organized. 3. The names of the incorporators and their places of residence. 4. The time of its duration, which shall not in any case be less than three nor more than one hundred years. 5. The pursuit or business agreed upon, specifying it in general terms. 6. The place of its general business. 7. The amount of stock each party has subscribed. 8. The amount of each share, and the limit of capital stock agreed upon. 9. The number and kind of officers, their qualifications and term of office, and the time and manner of their election, removal, and resignation, with the names of the officers to serve until the first general election; *Provided*, that in no case shall the number of directors be less than three nor more than twenty-five. 10. How many of the entire board of directors shall be necessary to form a quorum and be authorized to transact the business and exercise the corporate powers of the corporation; *provided*, that a quorum shall not be less than one-fourth of the entire number. 11. Whether or not the private property of the stockholders shall be liable for its obligations. 12. Such additional clauses as the incorporators deem necessary for conducting the business of the corporation and for its future safety and welfare.⁴¹³

To the agreement prepared in accordance with the provisions of the preceding section, there shall be added the oath of affirmation of three or more of the incorporators taken

⁴¹² Utah Rev. Stat. § 314.

⁴¹³ *Ibid* § 315.

before any officer duly authorized to administer an oath, to the effect that they have commenced, or it is *bona fide* their intention to commence to carry on, the business mentioned in the agreement, and that the affiants verily believe that each party to the agreement has paid, or is able to and will pay the amount of the stock subscribed for by him; *provided*, that said affidavit shall not be made until at least ten per cent. of the stock subscribed by each stockholder and not less than ten per cent. of the capital stock of the corporation has been paid in; *provided further*, that where subscriptions to the capital stock of any corporation formed under the provisions of this chapter shall consist, in whole or in part, of property necessary to the pursuit agreed upon, there must appear in the articles of incorporation a description of the property so taken with a statement of the fair cash value thereof, which statement, except in the case of corporations organized for mining or irrigating purposes, shall be supplemented by the affidavits of three persons, to the effect that they are acquainted with said property and that it is reasonably worth the amount in cash for which it was accepted by the corporation; and the owners of such property shall be deemed to have subscribed such amount to the capital stock of such corporation as will represent the fair estimated cash value of so much of said property, or of such interest therein, as they may have conveyed to such corporation by deed actually executed and delivered.⁴¹⁴ Before the first or any other officers shall enter upon the duties of their respective offices, they shall take and subscribe an oath of office, that they will discharge the duties of such office to the best of their judgment, and that they will not do nor consent to the doing of any matter or thing relating to the business of the corporation with intent to defraud any stockholder or creditor or the public, which oaths shall be filed in the office of the county clerk.⁴¹⁵ The agreement with the oath or affirmation, shall, within ten days from its due execu-

⁴¹⁴ *Ibid.* § 316.

⁴¹⁵ *Ibid.* § 317.

tion, be deposited with the county clerk of the county in which the general business is to be carried on, and shall be by him recorded in a book to be prepared for that purpose and kept in his office.⁴¹⁶ A certificate of filing by the clerk, together with the articles of agreement are then filed with the Secretary of State; and thereupon corporate existence shall begin.⁴¹⁷ Failure to use the franchise for two years constitutes a forfeiture of it.⁴¹⁸ The ordinary powers are granted.⁴¹⁹ Amendments may be made and filed like the original charter⁴²⁰ so long as they are in accordance with the laws of the State; "*provided* that the original purpose of the corporation shall not be altered, nor shall the capital stock be diminished to an amount less than fifty per cent. in excess of the indebtedness of the corporation; and *provided*, further, that the personal or individual liability of the holder of full-paid capital stock for assessments or for the indebtedness or obligations of the corporation shall not be changed without the consent of all the stockholders."⁴²¹

§ 55. Vermont.

Five or more persons of lawful age may, by articles of association, form a corporation for carrying on any object or business not repugnant to public policy or the laws of this state, excepting telegraph, telephone, express, banking and insurance business, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies or corporations intended to derive profits from the loan of money or to deal in real estate, but if, in the opinion of the Secretary of State, the business of a proposed corporation may be repugnant to public policy or the laws of this State, he shall, before making the record hereinafter pro-

⁴¹⁶ *Ibid.* § 318.

⁴¹⁷ *Ibid.* § 319.

⁴¹⁸ *Ibid.* § 320.

⁴¹⁹ *Ibid.* § 322.

⁴²⁰ *Ibid.* § 339.

⁴²¹ *Ibid.* § 338.

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vided, refer the same to a judge of the supreme court, who shall have full power to determine, with or without hearing, whether said proposed corporation may or may not be organized under the provisions of this chapter.⁴²²

The articles of association shall set forth the name of the corporation, the object or objects for which it is established, the place in which the business is to be carried on, the amount of its capital stock, if any, and be signed by the persons who associate to form it, with the designation of the post-office address of each. Any corporate name may be assumed which is not in use by another corporation or company, and a corporation so organized may adopt a corporate seal.⁴²³ Such articles of association shall be transmitted to the Secretary of State, who shall, if the same are made and executed in compliance with the preceding section, record them in a book kept for that purpose and return to the corporators a certified copy thereof, which copy shall be recorded in the office of the clerk of the town in which the principal place of business of the corporation is to be located, in a book kept for that purpose. When said original articles and said certified copy are so recorded, and the franchise or license tax required by law, if any, has been paid to the State Treasurer, the signers thereof shall be a corporation, with the rights and powers and subject to the duties and liabilities of corporations.⁴²⁴

The ordinary corporate powers are given.⁴²⁵ The name and location of the corporation may be changed by a two-thirds vote of the stockholders, the change being recorded like the original articles.⁴²⁶

§ 56. Virginia.

Three or more persons may associate to establish a corpora-

⁴²² Vt. Gen. L. § 3704.

⁴²³ *Ibid.* § 3705.

⁴²⁴ *Ibid.* § 3706.

⁴²⁵ *Ibid.* §§ 3719-3721.

⁴²⁶ *Ibid.* § 3734; 1898, No. 68.

tion for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose, except a railroad company, a telegraph company, a telephone company, a canal company, a turnpike company, or other company which shall need to possess the right of eminent domain for the purpose of taking and condemning lands within this State.⁴²⁷

The certificate of incorporation shall set forth: (a) The name of the corporation, which name shall contain the word "corporation," or the word "incorporated," and shall be such as to distinguish it from any other corporation engaged in a similar business, or promoting or carrying on similar objects or purposes in this State. (b) The name of the county, city, or town wherein its principal office in this State is to be located. (c) The purposes for which it is formed. (d) The maximum and minimum amount of the capital stock of the corporation, and its division into shares; and, if there be more than one class of stock created by the certificate of incorporation, a description of the different classes thereof, with the terms on which such different classes are created. (e) The period, if any, limited for the duration of the corporation. (f) The names and residences of the officers and directors who, unless sooner changed by the stockholders, are for the first year to manage the affairs of the corporation. (g) The amount of real estate to which its holdings at any time are to be limited. (h) The certificate of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business, and for the conduct of the affairs of the corporation; and any provision creating, defining, limiting, or regulating the powers of the corporation, of the directors, or of the stockholders, or of any class or classes of stockholders; provided, such provision be not inconsistent with this act.⁴²⁸

The certificate, signed and acknowledged by the three or more incorporators, shall be presented to the judge of the

⁴²⁷ Va. Corp. Supp. ch. 1, § 1.

⁴²⁸ *Ibid.* § 2.

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county or city court where the principal office is to be located. The judge shall certify whether the certificate is signed in accordance with the requirements of the act. If so, it shall be presented to the State Corporation Commission, which shall ascertain whether the applicants are legally entitled to a charter. If they so certify, the certificate shall be filed with the Secretary of the Commonwealth, who shall record it and also cause it to be recorded in the clerk's office of the local court. As soon as the certificate is filed with the Secretary of the Commonwealth the corporation comes into existence, with the powers named in the certificate and the general powers conferred by law.⁴²⁹ Until such amount of stock as the incorporators determine (not less than the minimum fixed by the certificate) has been subscribed, the signers of the certificate shall have direction of the affairs of the corporation.⁴³⁰ Amendments may be made after beginning business by a two-thirds vote of the stockholders, filed and recorded like the original certificate.⁴³¹

The ordinary powers are granted, including "if authorized so to do in its charter, certificate of incorporation, or articles of association or in any amendment thereof, to subscribe to, purchase, or otherwise acquire or to guarantee or to become surety in respect to the stock, bonds, or other securities and obligations of other companies;" ⁴³² but the corporation cannot issue bills, notes or other evidences of debt for circulation as money.⁴³³ It may conduct its business in other States or countries, hold directors' meetings outside the State, have offices without the State, and hold, purchase, mortgage and convey real and personal property without as well as within the State; provided that the principal office shall be in the State.⁴³⁴

⁴²⁹ *Ibid.* § 3.

⁴³⁰ *Ibid.* § 4.

⁴³¹ *Ibid.* § 7.

⁴³² *Ibid.* ch. 5, § 2.

⁴³³ *Ibid.* § 3.

⁴³⁴ *Ibid.* § 5.

§ 57. Washington.

Two or more persons may be incorporated for the following purposes by subscribing and acknowledging articles of incorporation, and filing a copy with the Secretary of State and another with the county auditor of the county in which the principal place of business of the company is intended to be located, and retain the third in the possession of the corporation. Said articles shall state the corporate name of the company, the object for which the same shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the capital stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for such length of time (not less than two nor more than six months) as may be designated in such certificate, and the name of the city, town or locality and county in which the principal place of business of the company is to be located. Amendments may be made to the articles of incorporation, by supplemental articles, executed and filed the same as the original articles.⁴³⁵ Corporations may be formed for manufacturing, mining, milling, wharfing and docking, mechanical, banking, mercantile, improvement and building purposes, or for the building, equipping and managing water flumes for the transportation of wood and lumber, or for the purpose of building, equipping and running railroads, or constructing canals or irrigation canals, or engaging in any other species of trade or business: *Provided*, That no such corporation shall commence business or institute proceedings to condemn land for corporate purposes until the whole amount of its capital stock has been subscribed; And, *Provided further*, That the provisions of the foregoing proviso shall not apply to corporations engaged exclusively in loaning money on real estate, nor to corporations engaged exclusively in raising money from, and loaning or repaying it to, their own members, and which confine their

⁴³⁵ Wash. Gen. Stat. § 1498.

loaning and business operations wholly to the counties of their principal place of business, respectively, and to the counties adjacent and adjoining thereto.⁴³⁶ It is now provided that corporations may be formed for any purpose for which individuals may lawfully associate.⁴³⁷

The ordinary powers are granted; ⁴³⁸ but there is no power to issue bills, notes, or other evidences of debt for circulation as money.⁴³⁹ A list of the stockholders shall be kept which shall be open to the inspection of stockholders and creditors.⁴⁴⁰

§ 58. West Virginia.

Five or more persons may sign an agreement in which shall be set forth: I. The name of the corporation; but no name shall be assumed already in use by another existing corporation of this State, nor so nearly similar thereto in the opinion of the Secretary of State as to lead to confusion or uncertainty; II. The location of its principal business and of its chief works; III. The object or objects for which the corporation is formed; IV. The capital stock, number and par value of shares, and amount of capital paid in; and if more than one class of stock, a description of them; V. The names and post-office addresses of the incorporators, and the number of shares subscribed for by each; VI. The period limited for the duration of the corporation; VII. The agreement may also contain any provisions which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of the stockholders, provided such provision be not inconsistent with the law of this State.⁴⁴¹

⁴³⁶ *Ibid.* § 1497, amended 1895, p. 338, § 1.

⁴³⁷ Wash. 1903, p. 124, § 1.

⁴³⁸ Wash. Gen. Stat. § 1500.

⁴³⁹ *Ibid.* § 1511.

⁴⁴⁰ *Ibid.* § 1513.

⁴⁴¹ W. Va. Code, ch. 54, § 6, as amended, 1901, ch. 35.

The purposes for which incorporations may be had include "any other purpose or business useful to the public for which a firm or copartnership may be lawfully formed in this State,"⁴⁴² not including, however, buying land and reselling it at a profit.⁴⁴³ The capital shall not exceed five million dollars.⁴⁴⁴ At least ten per cent. of the par value of the stock must be paid in good faith by each incorporator.⁴⁴⁵

The agreement is to be filed with the Secretary of State, who shall issue a certificate; and the corporate existence then begins.⁴⁴⁶ The existence of a corporation is limited to fifty years.⁴⁴⁷ The certificate shall be recorded by the clerk of the county court in which the principal office is kept within three months.⁴⁴⁸ The company must commence business within one year, or the certificate will be void.⁴⁴⁹

The ordinary powers are granted;⁴⁵⁰ and the powers of each corporation are "limited by the purposes for which it is incorporated, and no corporation shall engage in transactions or business not proper for those purposes; nor shall corporate powers be exercised in violation of any law of the State."⁴⁵¹ "No corporation shall be incorporated for the sole purpose of purchasing real estate in order to sell the same for profit, nor shall it, except by vote of its stockholders, regularly had, subscribe for or purchase the stock, bonds or other securities of any joint-stock company, or become surety or guarantor for the debt or default of such company."⁴⁵²

There must at all times be at least five stockholders.⁴⁵³

⁴⁴² W. Va. Code, ch. 54, § 2.

⁴⁴³ *Ibid.* § 3.

⁴⁴⁴ *Ibid.* § 4.

⁴⁴⁵ *Ibid.* § 7.

⁴⁴⁶ *Ibid.* §§ 9, 10.

⁴⁴⁷ *Ibid.* § 11.

⁴⁴⁸ *Ibid.* § 20.

⁴⁴⁹ *Ibid.* ch. 53, § 8.

⁴⁵⁰ *Ibid.* ch. 52, § 1.

⁴⁵¹ *Ibid.* § 2.

⁴⁵² *Ibid.* § 3, amended, 1901, ch. 35.

⁴⁵³ W. Va. Code, ch. 53, § 17.

§ 59. Wisconsin.

Three or more adult persons, residents of the State, may form a corporation "to conduct, pursue, promote or maintain any one or more of the following named purposes, the same being of a lawful nature."⁴⁵⁴ Here follows a long enumeration of purposes, most of them specific. The more general are the following: Chemical, mechanical or manufacturing business; commission, storage, forwarding, shipping or transportation business; heating or lighting or furnishing power or signals by electricity or otherwise; inventions, and the encouragement or aiding of inventors and patentees; loaning money on security or otherwise; lumbering, logging, and other like business; manufacturing, mercantile, and other like purposes, and the locating, building, encouraging and establishing manufactories and manufacturing establishments in cities and towns in this State; mechanical purposes; mercantile purposes; mining, smelting, quarrying and other like business; buying, selling, exchanging and dealing in all kinds of personal property; real property, and the buying, selling, exchanging and dealing in all kinds thereof; renting and leasing buildings or structures of any kind, and the building, selling, and dealing therein; telegraphing and telephone business; or for any lawful business or purpose whatever, whether similar to the purposes herein mentioned or not, except the business of banking, insurance (other than title insurance), building or operating public railroads or plank or turnpike roads or other cases otherwise specially provided for. Any such corporation may be formed to have a capital stock divisible into shares or without any capital stock upon such plan as may be agreed upon.⁴⁵⁵

The articles, signed and acknowledged by the incorporators, contain a declaration of the purposes of the corporation; the name and location of such corporation; but such name shall not contain the names of individuals in the manner in which

⁴⁵⁴ Wis. Stat. § 1771.

⁴⁵⁵ *Ibid.*

they are ordinarily used in partnerships or business names; no corporate name shall be held illegal because of the omission of the word "limited:" the capital stock, and number of shares and amount of each share; the designation of general officers and the number of directors, which shall not be less than three; and the directors may be required to be classified into three classes so that one-third shall hold their offices for one year, one-third for two and one-third for three years; in which case all directors elected subsequent to the first shall hold their offices for three years except when elected or appointed to fill vacancies; the principal duties of the several general officers respectively; the method and conditions upon which members shall be accepted, discharged or expelled; and, in stock corporations, persons holding stock, according to the regulations of the corporation, and they only, shall be members; such other provisions or articles, if any, not inconsistent with law, as they may deem proper to be therein inserted for the interests of such corporation or the accomplishment of the purposes thereof, including, if desired, the duration of its existence.

The articles are filed with the Secretary of State, and a copy within thirty days recorded by the register of deeds of the county in which the corporation is located, and no corporation, until the articles are left for record, shall have legal existence.⁴⁵⁶ Amendments may be made by a two-thirds vote and similarly recorded.⁴⁵⁷

§ 60. Wyoming.

Three or more persons may form a corporation for "carrying on any kind of manufacturing, mining, chemical, merchandising or mechanical business, constructing wagon roads, railroads, telegraph lines, digging ditches, building flumes, running tunnels, dealing in real estate or carrying on any branch of business designed to aid in the industrial or productive in-

⁴⁵⁶ *Ibid.* § 1772, 1901, ch. 238, § 1.

⁴⁵⁷ *Ibid.* § 1774, 1901, ch. 238, § 2.

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terests of the country." Duplicate certificates are signed and acknowledged, stating the name of the proposed company; the object, which must not include more than one general line of business;⁴⁵⁸ the amount of the capital stock; the number of shares into which the capital stock is divided, and par value per share; the term of existence, not to exceed fifty years; the number of trustees, and their names, who shall manage the affairs of the company for the first year, not to be less than three nor more than nine; the name of the town and county where the operations of the company shall be carried on.⁴⁵⁹

One of the certificates shall be filed with the county clerk of each county where business is to be carried on, and one in the office of the Secretary of State.⁴⁶⁰ When the certificate is filed with the Secretary of State the corporation comes into existence, with the ordinary powers.⁴⁶¹ If any part of the business is to be carried on outside the State the certificate shall so state.⁴⁶²

§ 61. Great Britain.

Seven or more persons associated for any lawful purpose may form an incorporated company, with or without limited liability.⁴⁶³ The liability may be limited to the amount, if any, unpaid upon the shares held by them, or may be unlimited.⁴⁶⁴ When a company is formed having limited liability, a memorandum of association shall be signed containing the name of the society, with the addition of the word "Limited" as the last word in the name; the part of the United Kingdom in which the principal office is to be situated; the objects of the company; a declaration that the liability of members is limited; and the proposed amount of capital. No

⁴⁵⁸ Wyo. Const. Art. 10, § 6.

⁴⁵⁹ Wyo. Rev. Stat. § 3029.

⁴⁶⁰ *Ibid.*

⁴⁶¹ *Ibid.* §§ 3032, 3078.

⁴⁶² *Ibid.* § 3034.

⁴⁶³ 25 & 26 Vict. ch. 89 (Companies Act of 1862), § 6.

⁴⁶⁴ *Ibid.* § 7.

subscriber shall take less than one share, and each subscriber shall write after his name the number of shares he takes.⁴⁶⁵ The provisions of the memorandum may be altered with respect to capital and shares, and the name may be changed;⁴⁶⁶ or other amendments may be made by consent of court.⁴⁶⁷

The memorandum may be accompanied by articles of association; except so far as modified by such articles, the company shall be subject to regulations provided in the Act,⁴⁶⁸ as to shares, meetings, directors, dividends, accounts, etc. The memorandum and articles are delivered to the registrar of joint-stock companies; and upon registration the company becomes a body corporate.⁴⁶⁹

No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except by consent of the earlier company.⁴⁷⁰

No allotment of shares can be made to subscribers unless the amount fixed in the memorandum or articles as the minimum subscription or if no amount is so named there the whole amount of the capital has been subscribed, and the amount fixed to be paid on application has been paid in. This minimum subscription and amount paid in must be in cash, and the amount payable on application shall not be less than five per cent. of the par value.⁴⁷¹

§ 62. Canada.

A joint-stock company, which is "a body corporate and politic," may be created "for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends," except railways, telegraph or telephone lines, bank-

⁴⁶⁵ *Ibid.* § 8.

⁴⁶⁶ *Ibid.* §§ 12, 13.

⁴⁶⁷ 53 & 54 Vict. ch. 62, § 1.

⁴⁶⁸ 25 & 26 Vict. ch. 89, §§ 14, 15.

⁴⁶⁹ *Ibid.* §§ 17, 18.

⁴⁷⁰ *Ibid.* § 20.

⁴⁷¹ 63 & 64 Vict. ch. 48, § 4.

ing, insurance and loan companies.⁴⁷² Five or more persons may be incorporators, and shall sign a memorandum of agreement stating the proposed corporate name, "which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise on public grounds objectionable;" the purposes, the place within Canada which is to be its chief place of business, the proposed amount of its capital stock, the number of shares and amount of each share, the names and address and calling of each applicant, with special mention of the names of from three to fifteen of the number who are to be the first provisional directors; and the amount of stock taken by each applicant, the amount, if any, paid in on the stock of each and the manner in which it has been paid and is held for the company.⁴⁷³ This memorandum is filed with the Secretary of State. It is then necessary to establish to the satisfaction of the Secretary the sufficiency of the memorandum and the truth of the statements contained in it, and that the proposed name is not the name of any other company; and for that purpose the Secretary shall take and keep of record any requisite evidence in writing.⁴⁷⁴ Upon being satisfied, the Secretary of State by letters patent grants a charter,⁴⁷⁵ and upon publication of the fact in the Gazette the corporation comes into existence.⁴⁷⁶ A change of name may be obtained in the same manner.⁴⁷⁷

Business shall not begin until ten per cent. of the capital stock has been subscribed and paid for.⁴⁷⁸

General powers are conferred.⁴⁷⁹ An office must be maintained in Canada, which shall be the legal domicile of the corpo-

⁴⁷² Can. 1902, ch. 15, § 5.

⁴⁷³ *Ibid.* § 6.

⁴⁷⁴ *Ibid.* § 7.

⁴⁷⁵ *Ibid.* § 5.

⁴⁷⁶ *Ibid.* § 10.

⁴⁷⁷ *Ibid.* § 15.

⁴⁷⁸ *Ibid.* § 18.

⁴⁷⁹ *Ibid.* § 21.

ration.⁴⁸⁰ The stock-book, showing the names and residences of all shareholders, shall be open to inspection by shareholders and creditors, who may make extracts therefrom.⁴⁸¹

The affairs of the company may be inspected by an inspector appointed by a judge of the province in which the chief office is situated. The judge may act on the application of at least one-fourth (in value) of the stockholders, who must, however, show by evidence that there is good reason for requiring the investigation, and that they are not actuated by malicious motives.⁴⁸²

§ 63. New Brunswick.

The provisions of the New Brunswick Joint Stock Companies' Act⁴⁸³ follow closely those of Ontario. The chief differences are as follows: The amount of capital stock shall be not less than two thousand dollars actually subscribed,⁴⁸⁴ and at least one-half the amount of stock must have been subscribed.⁴⁸⁵ Any cash payments for stock must at the time of application be standing to its credit in some chartered bank of the Province.⁴⁸⁶ Two weeks' notice of the application must be given in the Gazette⁴⁸⁷ except where the capital is not to exceed five thousand dollars.⁴⁸⁸

§ 64. Nova Scotia.

Three or more persons may associate for any lawful purpose except to form a banking, loan or trust company, thereby forming an incorporated company with or without limited liability; the liability may be limited to the amount unpaid on

⁴⁸⁰ *Ibid.* § 22.

⁴⁸¹ *Ibid.* § 75.

⁴⁸² *Ibid.* § 79.

⁴⁸³ N. B. 1893, ch. 7.

⁴⁸⁴ *Ibid.* § 3, *d.*

⁴⁸⁵ *Ibid.* § 5, cl. 3.

⁴⁸⁶ *Ibid.* § 5, cl. 6.

⁴⁸⁷ *Ibid.* § 4.

⁴⁸⁸ *Ibid.* § 7.

the shares, or to such amount as is stated in the memorandum of association.⁴⁸⁹ The memorandum, where the liability is limited to the amount unpaid, contains the name of the company (which must contain "limited" as its last word), the place of its registered office, the objects, a statement of the limitation of liability, the amount of capital, and the time of existence of the company, if its existence is to be for a limited time. No subscriber shall take less than one share; and each subscriber shall write opposite to his name the number of shares he takes, with his address and calling.⁴⁹⁰ The memorandum may be accompanied by articles of association, prescribing regulations for the company;⁴⁹¹ and in case it is not so accompanied certain prescribed regulations apply,⁴⁹² regulating the issue, calls upon, transfer and forfeiture of shares, meetings and votes, elections, powers, and proceedings of directors, dividends, accounts, etc. The memorandum is filed with the registrar of joint-stock companies,⁴⁹³ and the association, upon his certificate, becomes incorporated.⁴⁹⁴ Provision as to the name is made like that of the other Provinces;⁴⁹⁵ and a change of name and of constitution is provided for.⁴⁹⁶ A register is kept of all members, open to public inspection.⁴⁹⁷ The ordinary powers are granted,⁴⁹⁸ and provision is made for official inspection on the application of members holding one-fifth of the shares.⁴⁹⁹

A list of shareholders of every company, foreign or domestic, doing business in the Province, and of the number of shares held by each on the first day of January in each year, certified by

⁴⁸⁹ Nov. Sc. Rev. Stat. ch. 128, §§ 6, 7.

⁴⁹⁰ *Ibid.* § 8.

⁴⁹¹ *Ibid.* § 12.

⁴⁹² *Ibid.* § 13.

⁴⁹³ *Ibid.* § 15.

⁴⁹⁴ *Ibid.* §§ 17, 18.

⁴⁹⁵ *Ibid.* § 21.

⁴⁹⁶ *Ibid.* §§ 22-27.

⁴⁹⁷ *Ibid.* § 58.

⁴⁹⁸ *Ibid.* § 88.

⁴⁹⁹ *Ibid.* § 97.

the president and secretary of the company, shall be filed during the month of January in the office of the Provincial Secretary and in the registry of deeds for the district in which the company has its chief place of business within the Province.⁵⁰⁰

§ 65. Ontario.

Five or more persons may be incorporated for any of the purposes to which the legislative authority of Ontario extends except railway insurance and loan companies, for which special acts have been passed. The incorporators petition the Lieutenant Governor, stating the proposed corporate name (which shall not on any public ground be objectionable, or the name of any known company, partnership or individual or a name under which any known business is being carried on, or so nearly resembling the same as to deceive, provided the subsisting company, partnership, individual or person carrying on the business may consent); the objects of the company; the principal place of business in Ontario; the amount of capital stock and number and amount of shares; the name, residence and calling of each applicant; the number (not less than three) of the directors, with the names of the applicants (not less than three) who are to be the first directors. In case any amount has been paid in on shares by the transfer of property, the Provincial Secretary may require satisfactory evidence of the nature and value of the property. Each petitioner shall be the *bona fide* holder in his own right of the share or shares for which he has subscribed in the memorandum of agreement.⁵⁰¹ The applicants shall establish to the satisfaction of the Provincial Secretary the sufficiency of the memorandum and petition and the legality of the name, and for this purpose may take evidence in writing under oath.⁵⁰² When this is satisfactorily established the Lieutenant Governor by

⁵⁰⁰ Nov. Sc. Rev. Stat. ch. 127, § 15; 1903, ch. 16, § 2.

⁵⁰¹ Ont. Rev. Stat. ch. 191, § 10.

⁵⁰² *Ibid.* §§ 12, 13.

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letters patent grants a charter,⁵⁰³ and after publication of notice in the Gazette the corporation is established.⁵⁰⁴ The company must use the unabbreviated word "limited" on its signs, seals, notices, advertisements, etc.⁵⁰⁵ The ordinary powers are given, with the common restrictions on the right to hold real estate.⁵⁰⁶

A list of all stockholders, with the amount unpaid on each share, shall be open to inspection of all stockholders and creditors.⁵⁰⁷ A provision is made for inspection of the company, similar to that in the Canada act, on application of one-fifth (in value) of the shareholders.⁵⁰⁸

§ 66. Quebec.

Five or more persons may petition for a charter for any purpose within the jurisdiction of the legislature, except for construction and working of railways and business of insurance. On favorable report from the Attorney General the Lieutenant-Governor shall issue a charter, and the association then becomes a corporation.⁵⁰⁹ The petition indicates "the name of the proposed company, which shall not be that of any other company, or any name liable to be confounded therewith or otherwise on public grounds objectionable"; the object, the chief place of business within the Province, the amount of capital stock and number of shares; the name, address and calling of each applicant, with special mention of from three to nine of them who are to be the first directors, the major part of such directors to be resident in Canada and subjects of His Majesty, the amount of stock taken by each applicant, and the amount paid in on each share and the manner in which it has been paid in and is held for the company.

⁵⁰³ *Ibid.* § 9.

⁵⁰⁴ *Ibid.* § 15.

⁵⁰⁵ *Ibid.* § 23.

⁵⁰⁶ *Ibid.* § 25.

⁵⁰⁷ *Ibid.* §§ 71, 74.

⁵⁰⁸ *Ibid.* § 80.

⁵⁰⁹ Que. 1893, ch. 35, amending Rev. Stat. Art. 4696.

The aggregate of stock taken must be at least one-half of the authorized capital stock; and the amount paid in must be at least ten per cent. thereof, or five per cent. of the total capital, unless such total exceeds five hundred thousand dollars, when the aggregate upon such excess must be two per cent. thereof. The amount paid in must be standing to the credit of the company or its trustees in some chartered bank within the Province, unless the object of the company requires it to own real estate, in which case one-half may be invested in suitable real estate, held by its trustees, and fully of the required value over and above incumbrances.⁵¹⁰ The ordinary powers are granted.⁵¹¹ Notice of the application is published in the Gazette.⁵¹² The name, powers, etc., may be changed.⁵¹³

The names of shareholders, number of their shares, and amount unpaid on each share are kept in a book which is open to the inspection of all shareholders and creditors.⁵¹⁴

⁵¹⁰ Que. 1903, ch. 41, amending Rev. Stat. Art. 4697.

⁵¹¹ Que. Rev. Stat. Arts. 4655, 4705.

⁵¹² *Ibid.* Art. 4697.

⁵¹³ *Ibid.* Arts. 4703, 4706, 4709; 1903, ch. 41, § 5.

⁵¹⁴ *Ibid.* §§ 4681, 4684.

CHAPTER III

THE DOMICIL, RESIDENCE, AND CITIZENSHIP OF A CORPORATION.

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| <p>§ 71. Domicil of a corporation.</p> <p>72. In what State is the corporation chartered.</p> <p>73. Residence of a corporation.</p> <p>74. Presence for purposes of jurisdiction.</p> <p>75. Habitancy under the Judiciary Act.</p> | <p>§ 76. Residence for purposes of process and suit.</p> <p>77. Location of a corporation within a State.</p> <p>78. Location of a corporation chartered by Congress.</p> <p>79. Citizenship of a corporation.</p> <p>80. Corporation as subject or alien.</p> <p>81. Personality of a corporation.</p> |
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§ 71. Domicil of a corporation.

A corporation must come into being in the State by which it is created, and there it must at first be located and have its domicil. And since it can have no legal existence outside the incorporating State, it would seem clear that it can never acquire any other domicil, although in fact the principal part of its business is done in another State. And this is the prevailing view.¹ This is true even though the corporation comply with all the requirements of law in the foreign State, and take out a license and appoint the attorney general its agent for the service of process.² As Mr. Justice Holmes said:³ "If any person, natural or artificial, as a result of choice or on technical grounds of birth or creation, has a domicil in

¹ *Insurance Co. v. Francis*, 11 Wall. 210, 20 L. ed. 77; *Cook v. Hager*, 3 Colo. 386; *Taylor v. Branham*, 35 Fla. 297, 17 So. 552, 48 A. S. R. 249; *Duke v. Taylor*, 37 Fla. 64, 19 So. 172, 53 A. S. R. 232, 31 L. R. A. 484; *Aspinwall v. Ohio & M. Ry.*, 20 Ind. 492, 83 A. D. 329; *Life Assoc. of America v. Levy*, 33 La. Ann. 1203; *Chafee v. Fourth Nat. Bank*, 71 Me. 514; *Baltimore & O. R. R. v. Glenn*, 28 Md. 287, 92 A. D. 688.

² *Bergner & Engel Brewing Co. v. Dryfus*, 172 Mass. 154, 51 N. E. 531, 7 A. S. R. 251.

³ *Bergner & Engel Brewing Co. v. Dryfus*, *supra*.

one place, it cannot have one elsewhere, because what the law means by domicile is the one technically pre-eminent headquarters, which, as a result either of fact or of fiction, every person is compelled to have in order that by aid of it certain rights and duties which have been attached to it by the law may be determined. It is settled that a corporation has its domicile in the jurisdiction of the State which created it, and as a consequence that it has not a domicile anywhere else."

In a few English cases it is to be sure, said that a corporation may have two domicils.⁴ Such language, however, is always used *obiter* and must not be pressed. It is confined to the case of corporations which have a regular office and a resident manager within the jurisdiction; and the word "domicil" is loosely used. In a few cases it has been rightly held that a foreign corporation may have a "commercial domicile," so called, for taxation,⁵ or to fix national character in time of war.⁶ Commercial domicile is not actual domicile, and is acquired merely by carrying on business in a place.

§ 72. In what State is the corporation chartered.

It is sometimes a little difficult to decide in what place a corporation is chartered, and, therefore, is located. It clearly exists somewhere within the territory possessed by the incorporating government at the time of the incorporation, and its location continues the same after the incorporating government is succeeded by another. Thus a corporation created

⁴ "I think that this company may properly be deemed both Scotch and English. It may, for the purposes of jurisdiction, be deemed to have two domiciles." Lord St. Leonards in *Carron Iron Co. v. Maclaren*, 5 H. L. C. 416, 449. "A foreign corporation which carries on business in this country, has a legal existence here." Cotton, L. J., in *Russell v. Cambesfort*, 23 Q. B. D. 526, 528. See to the same effect, statements in *Newby v. Van Oppen*, L. R. 7 Q. B. 293; *Wood v. Anderston Foundry Co.*, 4 T. L. Rep. 708; *Ricker v. American Loan & Trust Co.*, 140 Mass. 346, 350.

⁵ *Atty. Genl. v. Bay State Mining Co.*, 99 Mass. 148, 153, 96 A. D. 717.

⁶ *Martine v. International Ins. Co.*, 53 N. Y. 339, 13 A. R. 529; *Driefontein C. G. Mines v. Janson*, [1901] 2 K. B. 419.

by the State of Georgia during the Civil war is recognized after the war has ceased as a corporation of Georgia;⁷ and a corporation created by the Territory of Kansas is to be regarded as a corporation of the State of Kansas after its admission to the Union.⁸

In case of a division of the territory of the incorporating State, the corporation must evidently belong to one part or the other: it cannot be a corporation of both governments. After West Virginia was set off from Virginia it was held that a corporation previously chartered continued to be a Virginia corporation unless it became affirmatively a corporation of West Virginia, by the act of the latter State, and that it did not become so merely because it had been formed to carry on mining operations within the territory that afterwards became West Virginia.⁹

Similarly where territory is ceded from one State to another, a corporation, even if it is located within the ceded territory, remains a corporation of the former State.¹⁰ But where one Territory is admitted into the Union as two States, neither of which exclusively represents the old Territory (as happened upon the admission of Dakota Territory as the States of North and South Dakota) it would seem that a corporation created by the Territory would become a corporation of that State in which it was in fact located at the time of the division.

⁷ *United States v. Insurance Companies*, 22 Wall. 99, 22 L. ed. 816; *Importing & Exporting Co. v. Locke*, 50 Ala. 332.

⁸ *Kansas Pac. R. R. v. Atchison, T. & S. F. R. R.*, 112 U. S. 414, 28 L. ed. 794.

⁹ *Kanawha Coal Co. v. Kanawha & Ohio Coal Co.*, 7 Blatch. 391, 406, Fed. Cas. No. 7,606. A statute of the new State provided a process by which a corporation previously chartered by Virginia might become a corporation of West Virginia, and act no longer under its former charter. This creates in effect a new corporation, and therefore a corporation which relied on a charter given before separation could only be a Virginia corporation. Query whether this would naturally be so in the absence of some such statute of West Virginia.

¹⁰ *Myers v. Manhattan Bank*, 20 Ohio, 283.

§ 73. Residence of a corporation.

A corporation cannot in the strictest sense reside in a foreign State, for the same reason that it cannot acquire a domicile there; because it cannot act personally outside the territory of the State which charters it. A corporation acting in a foreign State is in the same position as any non-resident who sends his agents into a State to do business for him. The opening of an office, and the transaction of business under the forms prescribed by law do not make the corporation a resident.¹¹ It was therefore correctly held that if a chattel mortgage must be acknowledged where the mortgagor resides, a foreign corporation cannot acknowledge such a mortgage.¹² And where a statute provides that if a mortgagor is a non-resident, the mortgage may be acknowledged by any officer authorized to take acknowledgments, a chattel mortgage by a foreign corporation is properly acknowledged before a notary public at its home office, he being such an officer.¹³ So under a statute subjecting a non-resident who does business in a State to taxation on the sums invested in the business, a foreign corporation doing business in the State is taxable as a non-resident.¹⁴ And conversely, under a statute taxing personal property in the place where the owner is an inhabitant, the property of a foreign corporation is not taxable.¹⁵ And under a statute imposing an income-tax on residents of a country, a foreign corporation doing business in the country is not subject to the tax.¹⁶ Where a statute gives a court power to

¹¹ *Boyer v. Northern Pac. Ry.*, 8 Idaho, —, 66 Pac. 826 (overruling *Easley v. Ins. Co.*, 4 Ida. 205, 38 Pac. 405); *Hammond Beef & Provision Co. v. Best*, 91 Me. 431, 40 Atl. 338, 42 L. R. A. 528; *Bergner & Engel Brewing Co. v. Dryfus*, 172 Mass. 154, 51 N. E. 532, 7 A. S. R. 251; *Shepard & Morse Lumber Co. v. Burleigh*, 50 N. Y. S. 135, 27 App. Div. 99.

¹² *Cook v. Hager*, 3 Colo. 386.

¹³ *Hewitt v. Gen. Elec. Co.*, 164 Ill. 420, 45 N. E. 725.

¹⁴ *British Com. Life Ins. Co. v. Comrs.*, 1 Abb. App. (N. Y.) 199; *People v. Barker*, 141 N. Y. 118, 35 N. E. 1073; 23 L. R. A. 95; *People v. Feitner*, 62 N. Y. S. 1107, 49 App. Div. 108.

¹⁵ *Boston Investment Co. v. Boston*, 158 Mass. 461, 33 N. E. 580.

¹⁶ *Attorney-General v. Alexander*, L. R. 10 Ex. 20.

appoint a receiver of the property of residents, it cannot appoint a receiver for a foreign corporation;¹⁷ nor can a foreign corporation become a voluntary insolvent under a law requiring the petition to be filed in the county in which the petitioner resides.¹⁸

The State of West Virginia has, however, made a difference in its tax law between a resident and a non-resident domestic corporation, thus assuming the possibility of residence outside the State of charter; and the distinction has been held reasonable by the court.¹⁹ While this use of "resident" may not be accurate, it is at least clear and useful.

§ 74. Presence for purposes of jurisdiction.

For the purpose of making a person party to a litigation, a State may take jurisdiction over him if he is found within the State, although he is neither resident nor domiciled there; and even if a foreign corporation is held not to be resident, it does not follow that it may not be found in the State.

On strict principle, however, it seems as impossible that a corporation should be found in a foreign State as that it should reside there; the same reason would cover both cases, namely, that the corporation cannot exist as such in a foreign State. The fact that it does business in the foreign State would not alter the matter; an individual might in the same way do business in the State, through an agent, without being found in the State and therefore without being suable there.

Upon this principle some earlier cases held that a corporation could not be found, and therefore could not be sued, outside the State which chartered it.²⁰ And this

¹⁷ *Stafford v. American Mills Co.*, 13 R. I. 310.

¹⁸ *Keystone Driller Co. v. Superior Ct.*, 138 Cal. 728, 72 Pac. 398.

¹⁹ *Blue Jacket Consol. Copper Co. v. Scherr*, 50 W. Va. 533, 40 S. E. 514.

²⁰ *Myers v. Dorr*, 13 Blatch. 22, Fed. Cas. No. 9,988; *Hume v. Pittsburgh, C. & S. L. R. R.*, 8 Biss. 31, Fed. Cas. No. 6,865; *Middlebrooks v. Springfield Fire Ins. Co.*, 14 Conn. 301 (*semble*); *Peckham v. North Par. in Haverhill*, 16 Pick. (Mass.) 274, 286; *Sullivan v. La Cross & M. S. P. Co.*, 10 Minn. 386; *Moulin v. Trenton M. L. & F. Ins. Co.*, 24 N. J. 222; *McQueen v. Middletown Mfg. Co.*, 16 Johns. (N. Y.) 5; *Hall v. Vermont & M. R. R.*,

continued to be held in Massachusetts until altered by statute.²¹

This condition of things proved in time quite inconvenient, and some way was necessary of bringing action against a foreign corporation in a State where it did business and incurred obligations. The simpler method of reaching this result is to make it a condition of a corporation doing business in a foreign State that it should submit to the courts of that State. This is a perfectly proper course to adopt,²² and is a common statutory provision. The effect of it is to subject a foreign corporation which does business in the State to the jurisdiction of the State courts, either as garnishee²³ or as defendant.²⁴ In the leading case on this point Mr. Justice Curtis said: "A corporation created by Indiana can transact business in Ohio only with the consent, express or implied, of the latter State. This consent may be accompanied by such conditions as Ohio may think fit to impose; and these conditions must be deemed valid and effectual by other States, and by this court, provided they are not repugnant to the Constitution or laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defence. In this instance, one of the conditions imposed by Ohio was, in effect, that the agent

28 Vt. 401. See *Aldrich v. Anchor Coal Co.*, 24 Ore. 32, 32 Pac. 756, 41 A. S. R. 831.

²¹ *Danforth v. Penny*, 3 Met. (Mass.) 564; *Gold v. Housatonic R. R.*, 1 Gray (Mass.), 424; *Andrews v. Mich. C. R. R.*, 99 Mass. 534, 97 A. D. 51; *Larkin v. Wilson*, 106 Mass. 120; *Desper v. Cont. Water Meter Co.*, 137 Mass. 252; and to the same effect, *Boston Electric Co. v. Electric Gas Lighting Co.*, 23 Fed. 838. But see *Hayden v. Androscoggin Mills*, 1 Fed. 93.

²² *Infra*, § 117.

²³ *Dittenhoefer v. Cœur d'Alene Clothing Co.*, 4 Wash. 519, 30 Pac. 660.

²⁴ *Lafayette Ins. Co. v. French*, 18 How. 404, 15 L. ed. 451; *Ex parte Schollenberger*, 96 U. S. 369, 24 L. ed. 853; *Diamond P. G. Co. v. Minneapolis M. F. Ins. Co.*, 55 Fed. 27; *Reyer v. Odd Fellows' F. A. Assoc.*, 157 Mass. 367, 32 N. E. 469, 34 A. S. R. 288; *Gibbs v. Queen Ins. Co.*, 63 N. Y. 114, 20 A. R. 513.

who should reside in Ohio and enter into contracts of insurance there in behalf of the foreign corporation, should also be deemed its agent to receive service of process in suits founded on such contracts. We find nothing in this provision either unreasonable in itself, or in conflict with any principle of public law. . . . We consider this foreign corporation, entering into contracts made and to be performed in Ohio, was under an obligation to attend, by its duly authorized attorney, on the courts of that State, in suits founded on such contracts, whereof notice should be given by due process of law, served on the agent of the corporation resident in Ohio, and qualified by the law of Ohio and the presumed assent of the corporation to receive and act on such notice. . . . We limit our decision to the case of a corporation acting in a State foreign to its creation, under a law of that State which recognized its existence, for the purposes of making contracts there and being sued on them, through notice to its contracting agents. The case of natural persons, and of other foreign corporations, is attended with other considerations, which might or might not distinguish it; upon this we give no opinion.”²⁵

Since, then, a State might impose such a condition upon a corporation as a condition of doing business within its borders, it was at last decided that a State statute providing for service of process upon foreign corporations was the imposition of such a condition, and that a judgment obtained under this statute against a foreign corporation was valid if the corporation had an agent and did business in the State and not otherwise.²⁶ And a statute providing for service of process on corporations generally, without excepting foreign corporations, might now be regarded as imposing the condition. This is often effected by requiring the foreign corporation to appoint an attorney upon whom service of process may be had. Such appointment is a submission of the corporation to the jurisdiction of the courts of the State. Where this has

²⁵ *Lafayette Ins. Co. v. French*, *supra*.

²⁶ *St. Clair v. Cox*, 106 U. S. 350, 27 L. ed. 222.

been done a provision endorsed on shares of stock that any action brought against the corporation by shareholders should be in the charter State, must be void.²⁷

In many jurisdictions, however, the same result has been reached without recourse to such elaborate reasoning. It is decided that a corporation is found and may be served with process where it does business, if there is any provision of law by which service of process can be made; in other words, a foreign corporation doing business in a State is suable just as a domestic corporation would be.²⁸ How far these decisions are influenced by such considerations as have been mentioned it is impossible to say. Some of the cases are put upon the ground that a corporation is resident in a foreign State in which it has a principal office;²⁹ though this is an objectionable ground on which to rest the doctrine, as has been seen, since a corporation, like an individual, can reside in but one place, and that of course must be the place of incorporation. In these jurisdictions the power to sue a corporation as resident is confined to cases where it has an office of its own for doing business, with a resident manager. "I think that when a foreign corporation, established by foreign law, sets up an office in England and carries on one of the principal parts of its business here, it ought to be considered as resident in England, and be treated as if it were established by English law."³⁰ On the other hand, if it merely acts through an

²⁷ *Savage v. Peoples' B. L. & S. Assoc.*, 45 W. Va. 275, 31 S. E. 991.

²⁸ *Newby v. Van Oppen*, L. R. 7 Q. B. 293; *Haggin v. Comptoir d'Escompte*, 23 Q. B. D. 519; *Wilson Packing Co. v. Hunter*, 8 Biss. 429, Fed. Cas. No. 17,852; *Blackburn v. Selma M. & M. R. R.*, 2 Flip. 525, Fed. Cas. No. 1,467; *Hayden v. Androscoggin Mills*, 1 Fed. 93; *Williams v. East Tenn. Va. & Ga. Ry.*, 90 Ga. 519, 16 S. E. 303; *Moshassuck Felt Mill v. Blanding*, 17 R. I. 297, 21 Atl. 538; *Newfelder v. German Amer. Ins. Co.*, 6 Wash. 336, 33 Pac. 870, 36 A. S. R. 166, 22 L. R. A. 287 (as to the law of California).

²⁹ *Newby v. Van Oppen*, L. R. 7 Q. B. 293 (but see *Wright v. Midland Ry.*, L. R. 8 Ex. 137); *Williams v. East Tenn. Va. & Ga. Ry.*, 90 Ga. 519, 16 S. E. 303; *Bank of North America v. Chicago, D. & V. R. R.*, 82 Ill. 493; *Pennsylvania Co. v. Sloan*, 1 Bradw. (Ill.) 364.

³⁰ *Cotton, L. J.*, in *Haggin v. Comptoir d'Escompte*, 23 Q. B. Div. 519.

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agent it is not regarded as being so far resident within the State as to be subject to process or to taxation.³¹ As was said by Sir Gorell Barnes in *The Princesse Clémentine*:³² "The distinction drawn by the cases is between an agent and an officer of the corporation. . . . In a popular sense, no doubt, the business of the defendant corporation is carried on by the corporation in England, but I do not think that this is so in the eye of the law. It seems to me that the business carried on in this country is that of an agency for the defendant corporation." To obtain jurisdiction in such States the corporation must be acting of itself through a branch establishment, not merely through an agent.

The Supreme Court of the United States takes the more defensible view. Thus Mr. Justice Davis said: "The declaration avers that the plaintiff in error (the defendant in the court below) is a corporation created by an Act of the Legislature of the State of New York, located in Aberdeen, Mississippi, and doing business there under the laws of the State. This, in legal effect, is an averment that the defendant was a citizen of New York because a corporation can have no legal existence outside of the sovereignty by which it was created.³³ Its place of residence is there, and can be nowhere else. Unlike a natural person, it cannot change its domicile at will, and although it may be permitted to transact business where its charter does not operate, it cannot on that account acquire a residence there."³⁴ And Mr. Chief Justice Waite has expressed the same view. "A corporation cannot change its

See to the same effect, *Nutter v. Messageries Maritimes*, 54 L. J. Q. B. 527; *Lambe v. Dewhurst & Son*, 16 Quebec S. C. 326; *Bowden v. Imperial M. & F. Ins. Co.*, 2 New So. Wales St. Rep. (Law) 257.

³¹ *Tharsis Sulphur & Copper Co. v. Soc. des Métaux*, 58 L. J. Q. B. 435; *Macdougall v. Schofield Woolen Co.*, 16 Quebec S. C. 411; *Glanville v. J. B. Lippincott Co.*, 17 New So. Wales W. N. 74; *Baker v. Walker Sons & Bartholemew*, 18 New So. Wales W. N. 282.

³² [1897] P. 18, 21.

³³ *Ohio & Miss. R. R. v. Wheeler*, 1 Black, 286, 17 L. ed. 130; *Louisville, C. & C. R. R. v. Letson*, 2 How. 497, 11 L. ed. 353.

³⁴ *Insurance Co. v. Francis*, 11 Wall. 210, 216, 20 L. ed. 77.

residence or its citizenship. It can have its legal home only at the place where it is located by or under the authority of its charter; but it may by its agents transact business anywhere, unless prohibited by its charter or excluded by local laws. Under such circumstances, it seems clear that it may, for the purpose of securing business, consent to be 'found' away from home, for the purposes of suit as to matters growing out of its transactions."³⁵ "By doing business away from their legal residence they do not change their citizenship, but simply extend the field of their operations. They reside at home, but do business abroad."³⁶

§ 75. Habitancy under the Judiciary Act.

The Federal Judiciary Act of 1887 (as amended in 1888) provided that suits brought in the Federal courts because of the different citizenship of the parties should be brought in a district of which one party was an inhabitant. The judges of at least three circuits held, under this act, that a corporation was an inhabitant of any district in which it did business.³⁷ But the weight of authority in the lower Federal courts was opposed to this, holding that a foreign corporation could inhabit no other State than the State of its charter,³⁸ even if the greater part of its business was done in the foreign State,

³⁵ *Ex parte Schollenberger*, 96 U. S. 369, 378, 24 L. ed. 853.

³⁶ *R. R. v. Koontz*, 104 U. S. 5, 11, 26 L. ed. 643.

³⁷ *Zambrino v. Galveston, H. & S. A. Ry.*, 38 Fed. 449; *Riddle v. New York, L. E. & W. R. R.*, 39 Fed. 290; *Hirschl v. J. I. Case T. M. Co.*, 42 Fed. 803; *Miller v. Eastern Ore. Gold Min. Co.*, 45 Fed. 345; *United States v. So. Pac. R. R.*, 49 Fed. 297; *East Tenn., V. & G. R. R. v. Atlanta & F. R. R.*, 49 Fed. 608, 15 L. R. A. 109; *Gilbert v. New Zealand Ins. Co.*, 49 Fed. 884, 15 L. R. A. 125.

³⁸ *Fales v. Chicago, M. & S. P. Ry.*, 32 Fed. 673; *Halstead v. Manning*, 34 Fed. 565; *Denton v. Internat. Co.*, 36 Fed. 1; *Walker v. St. Louis F. E. Mfg. Co.*, 40 Fed. 1; *Bensinger S. A. Cash Reg. Co. v. Nat. Cash Reg. Co.*, 42 Fed. 81; *Henning v. W. U. T. Co.*, 43 Fed. 97; *Myers v. Murray, Nelson & Co.*, 43 Fed. 695, 11 L. R. A. 216; *Bostwick v. Amer. Finance Co.*, 43 Fed. 897; *Nat. Typog. Co. v. N. Y. Typog. Co.*, 44 Fed. 711; *Baughman v. Nat. Waterworks Co.*, 46 Fed. 4; *Miller v. Wheeler & Wilson Mfg. Co.*, 46 Fed. 882; *Campbell v. Duluth, S. S. & A. Ry.*, 50 Fed. 241.

its principal office was there, and its annual election of directors held there;³⁹ and that one might sue in the Federal court in his own district a foreign corporation doing business there, since they were inhabitants of different States, and one party lived within the district.⁴⁰ The Supreme Court finally settled the matter in accordance with these cases, and it is now, therefore, everywhere recognized that a corporation inhabits only the State incorporating it.⁴¹

Where the incorporating State is divided into two or more districts it has been suggested that if the corporation does business in two districts it may be regarded as an inhabitant of both.⁴² These dicta, however, have been overruled. A corporation cannot reside in two places at once, whether those places are separated by a State line or not.⁴³ The corporation is an inhabitant of that part of the State in which the chief office is located.⁴⁴

§ 76. Residence for purposes of process and suit.

In statutes which are passed to regulate legal process the real distinction between a person called "resident" and a non-resident appears to be the distinction between one who is and one who is not liable to service of process. In such a statute

³⁹ *Filli v. Delaware, L. & W. Ry.*, 37 Fed. 65.

⁴⁰ *Minford v. Old Dominion S. S. Co.*, 48 Fed. 1; *Conn v. Chicago, B. & Q. R. R.*, 48 Fed. 177.

⁴¹ *Shaw v. Quincy Mining Co.*, 145 U. S. 444, 36 L. ed. 768; *So. Pac. Co. v. Denton*, 146 U. S. 202, 36 L. ed. 942; *Empire Coal & Transp. Co. v. Empire Coal & Min. Co.*, 150 U. S. 159, 37 L. ed. 1037. This section was held not to apply to an alien or to a corporation created by a foreign country. Such a corporation may be sued (as an alien) in any district where it does business. *In re Hohorst*, 150 U. S. 653, 37 L. ed. 1211.

⁴² *Zambrino v. Galveston, H. & S. A. Ry.*, 38 Fed. 449; *East Tenn. V. & G. R. R. v. Atlanta & F. R. R.*, 49 Fed. 608, 15 L. R. A. 109; citing several cases in State courts.

⁴³ *Galveston, H. & S. A. Ry. v. Gonzales*, 151 U. S. 496, 38 L. ed. 248, in which authorities on both sides are collected.

⁴⁴ See chapter xxxi for a consideration of this question, where a corporation is simultaneously incorporated in different States by the permission of the several legislatures. See *Winn v. Wabash R. R. Co.*, 118 Fed. 55.

a resident means one who can be served with process and sued in the courts. A foreign corporation which is doing business within a State and is therefore subject to the jurisdiction of the courts is regarded in most States as a resident for all purposes connected with legal process. In accordance with this doctrine it is held that a foreign corporation which has a business office in the State cannot be attached as a non-resident;⁴⁵ and as a resident may be defendant in garnishee process, under an act permitting such process only in case of resident defendants.⁴⁶ So where an affidavit of defence could be filed only by a resident, it was held that a foreign corporation having its principal office in a county could there file the affidavit.⁴⁷ And where an appeal from the judgment of a justice of the peace must be taken within ten days by a resident, it was held that a foreign corporation which had a business office and agent within the State must take its appeal within that time.⁴⁸

In the case of the statute of limitations, however, there is a serious conflict of decision; some important jurisdictions interpreting the statutory exception of "non-residents" or "persons out of the jurisdiction" as applying to all foreign

⁴⁵ *Middough v. S. J. & D. C. R. R.*, 51 Mo. 520, and cases cited. *A fortiori* where a foreign corporation has been granted a charter by a State, it is not subject to attachment as a non-resident. *Bernhardt v. Brown*, 119 N. C. 506, 26 S. E. 162, 36 L. R. A. 402. But in a few jurisdictions it is held that a foreign corporation, though doing business in a State, is subject to attachment as a non-resident. *South Carolina R. R. v. Peoples' Sav. Inst.*, 64 Ga. 18; *Beal v. Toby Valley Supply Co.*, 13 Pa. Co. Ct. 273, 2 Pa. Dist. R. 671; *Zucker v. Froment*, 5 Pa. Dist. R. 579; *Pain's P. S. Co. v. Lincoln P. & S. Co.*, 19 Pa. Co. Ct. 21; *Diener v. Wopsononock Hotel Co.*, 23 Pa. Co. Ct. 376, 10 Pa. Dist. R. 57; *Pierce v. Electric Co.*, 28 W. N. C. (Pa.) 311; *Bank of U. S. v. Merchants' Bank*, 1 Rob. Va. 573; *Cowardin v. Universal L. I. Co.*, 32 Grat. (Va.) 445. And in some jurisdictions it is held that a foreign corporation may be required as non-resident to file security for costs. *J. L. Mott Iron Works v. Faith*, 23 Pa. Co. Ct. 665; *Alaska S. S. Co. v. Macaulay*, 7 Brit. Colum. 338.

⁴⁶ *Bushel v. Commonwealth Ins. Co.*, 15 S. & R. (Pa.) 173; *Pierce v. Electric Co.*, 28 W. N. C. (Pa.) 311.

⁴⁷ *Bank of North America v. Chicago*, D. & V. R. R., 82 Ill. 493.

⁴⁸ *Harding v. Chicago & A. R. R.*, 80 Mo. 659.

corporations, while most jurisdictions in this case as in others connected with legal proceedings regard foreign corporations doing business within the State and, therefore, subject to service of process as not within the exception. The statute is interpreted strictly, and the foreign corporation is forbidden to set up the statute of limitations even if it has been doing business in the State, in several States;⁴⁹ and similarly it may avoid the statute when set up by a defendant in a suit brought by the corporation.⁵⁰ In other jurisdictions, however, it is held that since the exception is meant only to cover persons who cannot be sued, a foreign corporation which does business in the State, and may therefore be sued, is such a resident as is meant by the statute, and may avail itself of the limitation;⁵¹ and for the same reason it may not as non-resident, avoid the statute set up by the defendant.⁵² A foreign corporation not carrying on business or otherwise subjecting itself to suit is of course a non-resident, and cannot

⁴⁹ *Tioga R. R. v. Blossburg & C. R. R.*, 20 Wall. 137, 22 L. ed. 331 (on appeal from New York, and following the decisions of that State "whatever we may think of their soundness on general principles"); *Kirby v. Lake Shore & M. S. R. R.*, 14 Fed. 261 (a New York case); *Bank of Tennessee v. Armstrong*, 12 Ark. 602; *North Missouri R. R. v. Akers*, 4 Kan. 453, 96 A. D. 183; *Robinson v. Imperial S. M. Co.*, 5 Nev. 44; *Barstow v. Union C. S. M. Co.*, 10 Nev. 386; *Olcott v. Tioga R. R.*, 20 N. Y. 210, 75 A. D. 393; *Rathbun v. Northern C. R. R.*, 50 N. Y. 656; *Boardman v. Lake Shore & M. S. Ry.*, 84 N. Y. 57, 185; *Thompson v. Tioga R. R.*, 36 Barb. (N. Y.) 79; *Johnson & Lorimer Dry Goods Co. v. Cornell*, 4 Okl. 412, 46 Pac. 860; *Larson v. Aultman & Taylor Co.*, 86 Wis. 281, 56 N. W. 915, 39 A. S. R. 893; *State v. Mutl Acc. Soc. of N. Y.*, 103 Wis. 208, 79 N. W. 220.

⁵⁰ *Clarke v. Bank of Mississippi*, 10 Ark. 516, 52 A. D. 248.

⁵¹ *McCabe v. Illinois Cent. R. R.*, 4 McCr. 492, 13 Fed. Rep. 827; *Taylor v. Union Pacific R. R.*, 123 Fed. 155; *Huss v. Central R. R. & B. Co.*, 66 Ala. 472; *Lawrence v. Ballou*, 50 Cal. 258; *Pennsylvania Co. v. Sloan*, 1 Ill. App. 364; *Wall v. Chicago & N. W. Ry.*, 69 Ia. 498, 29 N. W. 427; *King v. National M. & E. Co.*, 4 Mont. 1; *O'Connor v. Aetna L. I. Co. (Neb.)*, 93 N. W. 137; *Turecott v. Yazoo & M. V. R. R.*, 101 Tenn. 102, 45 S. W. 1067; *Thompson v. Texas Land & Cattle Co. (Tex. Civ. App.)*, 24 S. W. 856; *Connecticut M. L. I. Co. v. Duerson*, 28 Grat. (Va.) 630; *Abell v. Penn. Mut. L. I. Co.*, 18 W. Va. 400.

⁵² *Bank of U. S. v. McKenzie*, 2 Brock. 393, Fed. Cas. No. 927.

take advantage of the statute;⁵³ and if, during part of the time, it is without a resident agent or otherwise not suable, the statute ceases during such time to run in its favor.⁵⁴

§ 77. Location of a corporation within the State.

It is often important, for purposes of jurisdiction or otherwise, to settle the exact location of a corporation within the State of incorporation. This seems to be determined by the location of the principal office.⁵⁵ It is not, however, always easy to determine where the principal office is. In the ordinary case, no doubt, it is the place where the meetings of the corporation are held, and effective directions with reference to its business given, not where the agents of the company actually deal with third parties.⁵⁶ Thus in the case of a railway company it has been held in England that it is located and does business where its office is, not where its great terminal stations are;⁵⁷ a company formed to carry on a pier is not located on the pier, but at its office;⁵⁸ and a company registered in England to carry on jute mills in India or a sulphur mine in Italy, is located in London, where its meetings are held and its directors give their orders.⁵⁹

In like manner, a corporation is located in Texas when its

⁵³ *Waterman v. Sprague Mfg. Co.*, 55 Conn. 554, 12 Atl. 240; *Hall v. Vermont & Mass. R. R.*, 28 Vt. 401.

⁵⁴ *Express Co. v. Ware*, 20 Wall. 543, 22 L. ed. 422; *Winney v. Sandwich Mfg. Co.*, 86 Ia. 608, 50 N. W. 565, 53 N. W. 421, 18 L. R. A. 524.

⁵⁵ *Lyman Ventilating & Refrigerating Co. v. Southard*, 12 Blatch. 405, Fed. Cas. No. 8,633; *Texas & P. R. R. v. Edmisson* (Tex. Civ. App.), 52 S. W. 635.

⁵⁶ *Jones v. Scottish Accident Ins. Co.*, 17 Q. B. D. 421; *Watkins v. Scottish Imper. Ins. Co.*, 23 Q. B. D. 285. See *Hastings v. Anacortes Packing Co.*, 29 Wash. 224, 69 Pac. 776.

⁵⁷ *Adams v. Great W. Ry.*, 30 L. J. Ex. 124, 6 H. & N. 404; *Shields v. Great N. Ry.*, 30 L. J. Q. B. 331; *Brown v. London & N. W. Ry.*, 32 L. J. Q. B. 318; *Rogers v. London, C. & D. Ry.*, 26 Week. Rep. 192; *Le Tailleur v. Southeastern Ry.*, 3 C. P. D. 18.

⁵⁸ *Aberystwith Promenade Pier Co. v. Cooper*, 35 L. J. Q. B. 44.

⁵⁹ *Casena Sulphur Co. v. Nicholson*, 1 Ex. D. 428. The case was to some extent disapproved by Lord Herschell in *Colquhoun v. Brooks*, 14 App. Cas. 493, 510, but not on the question of location.

office for the transaction of business is there, though its flour mills, grain elevators and cotton gins are in Indian Territory.⁶⁰

There is, however, a tendency in some of the English cases to depart from this sensible rule, and hold that a corporation is located at the place where the transactions in which it is engaged are actually carried out.⁶¹ Such a doctrine would cause confusion, and seems inconsistent with the cases already cited. It has been said that it is limited to cases where the business done in the registered office is merely formal; but even thus limited it is not to be commended.

§ 78. Location of a corporation chartered by Congress.

A corporation chartered by Congress may be in an anomalous position. The only portion of territory within the limits of the country for which Congress directly legislates, as a territorial legislature, is the District of Columbia. When acting as the legislature for the District, Congress may create a corporation, which would evidently be located within the District.⁶² Thus the "Freedman's Bank," chartered by Congress, was located in the city of Washington.⁶³ And unless Congress has constitutional power to create a corporation in some State, a corporation created by it must be a corporation of the District, and in strictness a foreign corporation elsewhere.⁶⁴

A national bank is a corporation which Congress has power to create within the borders of a State. The location of such a bank is evidently neither the District of Columbia nor the whole United States, but the city in which it is placed; and

⁶⁰ *Beattie v. Hardy*, 93 Tex. 131, 53 S. W. 685.

⁶¹ *Kilkenny & Gt. S. & W. Ry. v. Feilden*, 20 L. J. Ex. 141; *Keynsham Blue Lias Lime Co. v. Baker*, 33 L. J. Ex. 41; and see the latter case explained in *Jones v. Scottish Accident Ins. Co.*, 17 Q. B. D. 421.

⁶² *Layden v. Knights of Pythias*, 128 N. C. 546, 39 S. E. 47.

⁶³ *Cory v. State*, 55 Ga. 236; *Williams v. Creswell*, 51 Miss. 817; *Hadley v. Freedman's Savings & Trust Co.*, 2 Tenn. Ch. 122.

⁶⁴ So of an insurance company; *Daly v. Nat. Life Ins. Co.*, 64 Ind. 1; so of a fraternal and benevolent corporation, *Layden v. Knights of Pythias*, 128 N. C. 546, 39 S. E. 47.

it is not located in any other State.⁶⁵ In New York a national bank there located has been held to be a foreign corporation,⁶⁶ but it was under a statute defining a foreign corporation to be one "created by or under the laws of any other State government or country;" and the decision was due to the statutory definition.⁶⁷

The case of a railroad corporation created by the United States is more difficult. It has been held that such a company is located in every State in which it operates a railroad under the charter, and that it is to be treated as a domestic corporation in every such State.⁶⁸ This is opposed to the better English doctrine as to the location of a corporation.⁶⁹ Such a railroad must, it would seem, have a principal office somewhere, and that ought to be considered its location.

§ 79. Citizenship of a corporation.

It is everywhere held that corporations are not "citizens" in the sense in which that word is used in the Constitution of the United States.⁷⁰ The individual shareholders, however, have the rights of citizens, and the corporation often gets

⁶⁵ *Manufacturers' Nat. Bank v. Baack*, 8 Blatch. 137, Fed. Cas. No. 9,052; *Orange Nat. Bank v. Traver*, 7 Sawy. 210, 7 Fed. 146; *Nat. Park Bank v. Nichols*, 4 Biss. 315, Fed. Cas. No. 10,048; *St. Louis Nat. Bk. v. Allen*, 5 Fed. 551; *Market Nat. Bank v. Pacific Nat. Bank*, 64 How. Pr. 1; *Cook v. State Nat. Bank*, 52 N. Y. 96, 11 A. R. 667; *In re Cushing's Estate*, 82 N. Y. S. 795, 40 Misc. 505.

⁶⁶ *Cooke v. State Nat. Bank*, 50 Barb. (N. Y.) 339. See N. Y. Laws of 1890, c. 563, § 2.

⁶⁷ *Cook v. State Nat. Bank*, 52 N. Y. 96, 11 A. R. 667.

⁶⁸ *Van Dresser v. Oregon Ry. & Nav. Co.*, 48 Fed. 202; *Mooney v. U. P. R. R.*, 60 Ia. 346 (*semble*); *Losee v. McCarty*, 5 Utah, 528, 17 Pac. 452. In Pennsylvania, it is held that a railroad company chartered by Congress is not a foreign corporation, even though it does no business in the State. *Com. v. Texas & P. R. R.*, 98 Pa. 90; *Eby v. Northern Pacific R. R.*, 13 Phila. 144.

⁶⁹ *Supra*, § 77.

⁷⁰ *Bank of U. S. v. Deveaux*, 5 Cranch, 61, 3 L. ed. 38; *Covington Drawbridge Co. v. Shepherd*, 20 How. 227, 15 L. ed. 896; *Paul v. Virginia*, 8 Wall. 168, 19 L. ed. 357; *Ducat v. Chicago*, 10 Wall. 410, 19 L. ed. 972; *Railroad v. Koontz*, 104 U. S. 11, 26 L. ed. 643; *Phila. Fire Assoc. v. New York*, 119 U. S. 110, 30 L. ed. 342; *Pembina C. S. M. & M. Co. v. Penn.*, 125 U. S. 181, 31 L. ed. 650; *Hooper v. California*, 155 U. S. 648, 39 L. ed. 297; *Blake v.*

these rights indirectly through its members. The right to sue in the United States courts because of diverse citizenship cannot be exercised by the corporation because of any citizenship of its own; but the result finally reached is the same, since the members are conclusively presumed all to be citizens of the State of charter.⁷¹ It has been held, however, that under a statute permitting the location of mining claims by citizens of the United States, a corporation could locate a claim as citizen of the charter State.⁷² It has likewise been held that under a statute giving the Court of Claims jurisdiction over "claims for property of citizens of the United States" destroyed by Indian depredations, a corporation organized under the law of any State is to be deemed a citizen of the United States.⁷³

McClung, 172 U. S. 239, 43 L. ed. 432; Orient Ins. Co. v. Daggs, 172 U. S. 557, 43 L. ed. 552; Warren Mfg. Co. v. Etna Ins. Co., 2 Paine, 501, Fed. Cas. No. 17,206; Manufacturers' Nat. Bank v. Baack, 8 Blatch. 137, Fed. Cas. No. 9,052; Ins. Co. v. New Orleans, 1 Woods, 85, Fed. Cas. No. 7,052; Baltimore & O. T. Co. v. Del. & A. T. & T. Co., 7 Houst. 269; Cadwell v. Armour, 1 Pen. (Del.) 545, 43 Atl. 517; Ducat v. Chicago, 48 Ill. 172, 95 A. D. 529; Cin. Mut. H. A. Co. v. Rosenthal, 55 Ill. 85, 8 A. R. 626; Farmers' & M. Ins. Co. v. Harrah, 47 Ind. 236; Elston v. Piggott, 94 Ind. 14; Phoenix Ins. Co. v. Com., 5 Bush (Ky.), 68, 96 A. D. 331; Woodward v. Com., 9 Ky. L. Rep. 670, 7 S. W. 613; State v. Lathrop, 10 La. Ann. 398; State v. Foedick, 21 La. Ann. 434; Home Ins. Co. v. Davis, 29 Mich. 238; Hartford Ins. Co. v. Raymond, 70 Mich. 485, 38 N. W. 474; Daggs v. Orient Ins. Co., 136 Mo. 382, 38 S. W. 85, 58 A. S. R. 638, 35 L. R. A. 227; Tatem v. Wright, 23 N. J. L. 429; Western U. T. Co. v. Mayer, 28 Oh. S. 522. As was said in Ducat v. Chicago, *supra*, the term citizen "can be correctly understood in no other sense than that in which it was understood in common acceptance when the Constitution was adopted, and as it is universally explained by writers on government, without an exception. A citizen is of the *genus homo*, inhabiting, and having certain rights in some State or district. . . . These privileges attach to him in every State into which he may enter, as to a human being—as a person with faculties to appreciate them, and enjoy them, not to an intangibility, a mere legal entity, an invisible artificial being, but to a man, made in God's own image."

⁷¹ Louisville, C. & C. R. R. v. Letson, 2 How. 497, 11 L. ed. 353; Marshall v. B. & O. R. R., 16 How. 314, 14 L. ed. 953; St. Louis & S. F. Ry. v. James, 161 U. S. 545, 40 L. ed. 802; Hammond Beef & Prov. Co. v. Best, 91 Me. 431, 40 Atl. 338, 42 L. R. A. 528.

⁷² North Noonday Mining Co. v. Orient M. Co., 1 Fed. 522.

⁷³ United States v. N. W. Express S. & T. Co., 164 U. S. 686, 41 L. ed. 599.

§ 80. Corporation as subject or alien.

As a corporation is not ordinarily held to be a citizen, so it is not a subject. An act permitting service on "British subjects" out of the jurisdiction does not refer to a corporation created by a state of the British empire.⁷⁴ On the other hand a corporation chartered in a foreign country is an alien; thus in case of war between the countries it is subject to the disabilities of an alien enemy.⁷⁵ And conversely a corporation formed within the State is not an alien, though all its stockholders are aliens, and it is forbidden for that reason to hold land within the State that created it.⁷⁶

§ 81. Personality of a corporation.

Although not a citizen, a corporation is everywhere recognized as included under the term "person;" and, indeed, the very definition of corporation is a "legal person." It is therefore protected by any safeguard given to "persons" by the Constitution of the United States and its amendments and by the State constitutions.⁷⁷ A corporation is within a statute which provides that "no person who shall have a place in said city for regular transaction of business shall be deemed a non-resident."⁷⁸ Under a statute taxing the property of "white persons" for schools, it was held that the property of corporations was taxable, at any rate unless it was proved that all its stockholders were black; the statute being interpreted as meaning all persons but black persons.⁷⁹

⁷⁴ *Ingate v. Lloyd Austriaco*, 4 C. B. (N. S.) 704 (*semble*); *Connell v. Neill & Co.*, 7 New So. Wales, W. N. 6; *Lempriere v. New Pinnacle Group S. M. Co.*, 25 Vict. L. R. 363; *Moore v. Moodyville L. & S. M. Co.*, 26 Vict. L. R. 226.

⁷⁵ *Society for the Propagation of the Gospel v. Wheeler*, 2 Gall. 105, Fed. Cas. No. 13,156.

⁷⁶ *Hastings v. Anacortes Packing Co.*, 29 Wash. 274, 69 Pac. 776.

⁷⁷ *Pembina C. S. Mining & M. Co. v. Pennsylvania*, 125 U. S. 181, 31 L. ed. 650; *Charlotte, C. & A. R. R. v. Gibbs*, 142 U. S. 386, 35 L. ed. 1051; *Smyth v. Ames*, 169 U. S. 466, 42 L. ed. 819; *Pittsburgh, C. C. & S. L. R. R. v. Montgomery*, 152 Ind. 1, 49 N. E. 582, 71 A. S. R. 300; *Hammond Beef & Provision Co. v. Best*, 91 Me. 431, 40 Atl. 338, 42 L. R. A. 528.

⁷⁸ *Scharmann & Sons v. De Palo*, 72 N. Y. S. 1008, 66 App. Div. 29.

⁷⁹ *Trustees v. Bell County C. & I. Co.*, 96 Ky. 68.

TITLE II.

OF THE ACTION OF A CORPORATION IN A FOREIGN STATE.

CHAPTER IV.

NATURE AND POWERS OF A CORPORATION OUTSIDE THE STATE OF ITS CHARTER.

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| <p>§ 101. A corporation cannot exist outside the State of charter.</p> <p>102. A corporation is everywhere recognized as existing within the State of charter.</p> <p>103. A corporation may act outside the State of charter.</p> <p>104. Comity.</p> <p>105. The corporation of another State is a foreign corporation.</p> | <p>§ 106. What is recognized as a corporation.</p> <p>107. A corporation may exercise all its powers abroad.</p> <p>108. A foreign corporation may contract.</p> <p>109. A foreign corporation may become liable for tort.</p> |
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§ 101. A corporation cannot exist outside the State of its charter.

A corporation gets its power to act as an entity, distinct from the individuals who compose it, by grant from the State. The law of that State makes it a corporation; if the law ceased to exist, the body of individuals would cease to be a corporation. The association itself would of course still exist; it is not created by the law, but by agreement of its members; but its legal nature, powers, and rights, would be changed.¹ The association can exist as a corporation only where that law prevails which makes it such, that is, within the terri-

¹ *Duke v. Taylor*, 37 Fla. 64, 19 So. 172, 53 A. S. R. 232, 31 L. R. A. 484. See *March v. Eastern R. R. Co.*, 40 N. H. 548, 578, 77 A. D. 732; *Erie Ry. Co. v. State*, 31 N. J. L. 531, 544, 86 A. D. 226.

torial limits of the State of its charter;² for the law of a country has no extra-territorial operation. The consent of another State to its action cannot alter the matter.³ "A corporation," said Taney, C. J., "can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law, and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty."⁴

If, therefore, the parties who are associated as a corporation should in a foreign State attempt to act as a corporation (not merely as agents for the corporation), while their association in the act would be recognized, it could not be regarded as a corporate act. If they did business, they would be held as partners;⁵ if they bought land they would be tenants in common. And the same result would follow a refusal by a state to recognize a foreign incorporation.⁶

§ 102. A corporation is everywhere recognized as existing within the State of its charter.

The fact, however, that a corporation exists as such in the

² Taylor v. Branham, 35 Fla. 297, 17 So. 552; Chapman v. Hallwood Cash Regis. Co., (Tex. Civ. App.) 73 S. W. 969.

³ Aspinwall v. Ohio & M. Ry., 20 Ind. 492, 83 A. D. 329.

⁴ Bank of Augusta v. Earle, 13 Pet. 519, 588, 10 L. ed. 274.

⁵ Taylor v. Branham, 35 Fla. 297, 17 So. 552; March v. Eastern R. R., 40 N. H. 548, 77 A. D. 732; Erie Ry. v. State, 31 N. J. L. 531, 544, 86 A. D. 226. In the latter case Beasley, C. J., said: "A statute that should abolish the rule of comity, or should refuse a recognition of foreign corporations, would, it is conceived, have this effect and no more, *i. e.*, to convert the foreign corporators, as to the State enacting the supposed law, into a partnership of individuals; and thus, although the corporation as such could not, by suit or otherwise, assert its right to protect the property, the members of the company would be under no such disability."

⁶ It would seem to follow—and it has been so held—that if the corporation so-called cannot be shown to be a corporation *de facto*, the participants in the attempted organization will be liable as partners in any foreign State in which they have acted. Duke v. Taylor, 37 Fla. 64, 19 So. 172, 53 A. S. R. 232, 31 L. R. A. 484.

Chap. IV.] NATURE AND POWERS IN FOREIGN STATES. [§ 103.

State of its charter must, if properly proved, be fully recognized everywhere. This is simply recognizing the existence of a fact, and neither court nor legislature can possibly do otherwise. A statute which should try to declare that it was not a corporation would be void, like a statute to make black white;⁷ it is not the function of legislation to alter facts, but to make laws. Whenever, therefore, the rights of parties, which are in litigation anywhere, depend merely on an incorporation in a foreign State, it is only necessary to prove the fact of incorporation.⁸

Since the fact of legal incorporation must be accepted in a foreign State, such State cannot treat the corporation as a mere unincorporated aggregation of individuals. For this reason it has been held in England that a foreign corporation cannot be registered under the Companies Act. That act applies to ten or more persons doing business together; but a corporation already formed in a foreign State is but a single person. Its individual members might register as individuals, and form another company; but they could take no steps under the act as members of the foreign corporation.⁹ And where a foreign corporation does business through an agent, the individual members are not doing business in the country; the agent does business for the corporation, not for them. The number of persons doing business is, therefore, not the number of members of the corporation; business is done by only one, the corporation.¹⁰

§ 103. A corporation may act outside the State of charter.

Although a corporation cannot exist outside the State that creates it, it may nevertheless send its agents into another State, just as an individual may do; and if the latter State allows the agents to act, the corporation, though not present,

⁷ See *Bonham's Case*, 8 Co. 107; *London v. Wood*, 12 Mod. 669, 687, *per* Lord Holt.

⁸ *Duke v. Taylor*, 37 Fla. 64, 19 So. 172, 53 A. S. R. 232, 31 L. R. A. 484.

⁹ *Bulkeley v. Schutz*, L. R. 3 P. C. 764.

¹⁰ *Bateman v. Service*, 6 App. Cas. 386.

may acquire rights and become subject to liabilities. A corporation of one State may therefore act in another, just as an individual who never leaves one State may act in another. It may make contracts, commit torts, acquire and convey property, and in short, do all acts that may be done through an agent. "Natural persons, through the intervention of agents, are continually making contracts in countries in which they do not reside, and where they are not personally present when the contract is made; and nobody has ever doubted the validity of these agreements. And what greater objection can there be to the capacity of an artificial person, by its agents, to make a contract within the scope of its limited powers, in a sovereignty in which it does not reside; provided such contracts are permitted to be made by them by the laws of the place? The corporation must no doubt show that the law of its creation gave it authority to make such contracts, through such agents. Yet, as in the case of a natural person, it is not necessary that it should actually exist in the sovereignty in which the contract is made. It is sufficient that its existence as an artificial person, in a state of its creation, is acknowledged and recognized by the law of the nation where the dealing takes place; and that it is permitted by the laws of that place to exercise there the powers with which it is endowed."¹¹

But it is to be borne in mind that one who purports to represent a corporation outside the charter State must do so only as an agent; and that his appointment as agent must precede this power to act. The corporation in creating the agency, as in all its affairs, can act only in its own State. The organization of the corporation and the appointment of its principal agents, at least, must therefore be done in the charter State.¹²

§ 104. Comity.

It has been seen that the power of a foreign corporation to

¹¹ *Bank of Augusta v. Earle*, 13 Pet. 519, 588, 10 L. ed. 274.

¹² See *post*, chap. xiv.

act through an agent depends upon the permission of the State in which the act is to be done. Whether that permission is to be given is often said to be a question of comity, not of law; as if there were a distinction between them. This is, however, not the case. There is no discretion in the court; it must discover and enforce the law applicable to the case. "It is not the comity of the courts, but the comity of the nation which is administered, and ascertained in the same way and guided by the same reasoning by which all other principles of municipal law are ascertained and guided."¹³ Nor is it an important thing to say that the State though not the court recognizes the right of a foreign corporation to act as such by comity. This means no more than that the State is not obliged to recognize the right, but may refuse or cease to do so; but the same thing is true as to all parts of the law. In ceasing to recognize the right of the foreign corporation the State would only be altering its law, in the same way that it may alter any other part of its law. The term "comity," then, adds nothing to our knowledge of the subject and may be disregarded. Our task is to discover the principles actually adopted by the common law upon this subject.

§ 105. The corporation of another State is a foreign corporation.

For the purposes at least of our discussion the States of the American Union are foreign to one another; and a corporation chartered by one of those States is therefore a foreign corporation in each of the others.

Under a State statute defining a foreign corporation as one created "under the laws of any other State, government, or country" a corporation created by the United States is a foreign corporation;¹⁴ and this would seem to be true at common law. In Pennsylvania, however, it has been held that a railroad company, chartered by Congress and operating

¹³ Story, Conflict of Laws, 37.

¹⁴ *Daly v. National L. I. Co.*, 64 Ind. 1; *Cook v. State Nat. Bank*, 52 N. Y. 96, 11 A. R. 667.

entirely outside Pennsylvania, was not a foreign corporation; because "the general government in its relation to that of the several States cannot be considered a foreign government in the ordinary acceptance of that term."¹⁵

§ 106. What is recognized as a corporation.

Whether a body formed by association of individuals and chartered by the State will be regarded in a foreign State as a corporation depends upon the laws of both States. The legal effect which such association and charter gives depends upon the law of the State of charter; but whether the body thus formed, and having such legal qualities, will in the foreign State be deemed a corporation depends upon the law of the latter State. The fact that it is called a corporation in the State of its charter is not decisive; since in the foreign State the sort of body created, however named, may not be a corporation. On this point Mr. Justice Miller said: "The several acts of Parliament we have mentioned, expressly declare that they shall not be held to constitute the body a corporation. But whatever may be the effect of such declaration in the courts of that country, it cannot alter the essential nature of a corporation, or prevent the courts of another jurisdiction from inquiring into its true character, whenever that may come in issue. It appears to have been the policy of the English law to attach certain consequences to incorporated bodies, which rendered it desirable that such associations as these should not become technically corporations. Among these, it would seem from the provisions of these Acts, is the exemption from individual liability of the shareholder for the contracts of the corporation. Such local policy can have no place here in determining whether an association, whose powers are ascertained and its privileges conferred by law, is an incorporated body. . . . We have no hesitation

¹⁵ *Com. v. Texas & P. R. R.*, 98 Pa. 90. *Acc. Eby v. Northern Pac. R. R.*, 13 Phila. 144, 6 Wk. Notes Cas. 385 (Pa.).

in holding that, as the law of corporations is understood in this country, the association is a corporation." ¹⁶

In accordance with this principle an English joint-stock company has been held by the Supreme Court of the United States to be a corporation,¹⁷ though the Supreme Court of Massachusetts with greater accuracy described it as something between a corporation and a partnership, subject, however, to the law as to taxation which governed corporations.¹⁸ A joint-stock company of New York, however, has none of the qualities of a corporation, and is treated in another State merely as a partnership.¹⁹

The government of another State is recognized as a corporation. Thus the United States is in New York recognized as a corporation, and by the statute of that State ²⁰ a foreign corporation.²¹

§ 107. A corporation may exercise all its powers abroad.

It may be said generally that if not forbidden by the State in which it acts, a corporation may exercise its powers as well abroad as at home. No special grant of power is necessary for this purpose; and though in a few States such special grant is made, the statute conferring it must be regarded as a re-enactment of the common law. A foreign corporation permitted to do so by the State in which it acts may therefore carry on business,²² acquire and transfer prop-

¹⁶ *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 566, 576, 19 L. ed. 1029; see, also, *Ingate v. Austrian Lloyds Co.*, 27 L. J. C. P. 323.

¹⁷ *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 566, 19 L. ed. 1029, Bradley, J., dissenting.

¹⁸ *Oliver v. Liverpool & London Life & Fire Ins. Co.*, 100 Mass. 531; cf. *Lockwood v. Town of Weston*, 61 Conn. 211, 23 Atl. 9.

¹⁹ *Taft v. Ward*, 106 Mass. 518; *Bodwell v. Eastman*, 106 Mass. 525; *Gott v. Dinsmore*, 111 Mass. 45; *Taft v. Warde*, 111 Mass. 518; *Boston & A. R. R. v. Pearson*, 128 Mass. 445. See *General Steam Nav. Co. v. Guillo*, 13 L. J. Ex. 168, to the same effect.

²⁰ *Post*, § 173.

²¹ *In re Merriam*, 141 N. Y. 479, 36 N. E. 505.

²² See Chapter VIII.

erty,²³ and in short do any act which may be done through an agent or servant. As a corollary of its power to act, it possesses also the power to incur obligations as a result of its acts; a foreign corporation may, therefore, become bound by a contract and become liable for a tort.

§ 108. A foreign corporation may contract.

A foreign corporation, not expressly forbidden to do so by law, may make any contract which its charter gives it power to make.²⁴ And like an individual it may not only sue for breach of contract, but in the proper case may have specific performance of a contract in its favor,²⁵ or be subject to a decree for specific performance of its contract in favor of the other party.²⁶ But it may of course, as has been seen, make only such contracts as its charter gives it power to make; a corporation chartered to carry on the insurance business cannot engage in banking.²⁷ And while it is being wound up in its own State it cannot legally contract in a foreign State,

²³ See Chapter IX.

²⁴ *Bank of Augusta v. Earle*, 13 Pet. 519, 10 L. ed. 274; *Tombigbee R. R. v. Kneeland*, 4 How. 16, 11 L. ed. 855; *Hall v. Tanner & D. Engine Co.*, 91 Ala. 363, 8 So. 348; *Union B. R. R. v. E. T. & G. R. R.*, 14 Ga. 327, 341; *Wood H. Mining Co. v. King*, 45 Ga. 34; *Bank of Washtenaw v. Montgomery*, 3 Ill. 422; *Stevens v. Pratt*, 101 Ill. 206; *Commercial Union Ass. Co. v. Scammon*, 102 Ill. 46; *Dodge v. Council Bluffs*, 57 Ia. 560, 10 N. W. 886; *A., T. & S. F. R. R. v. Fletcher*, 35 Kan. 236, 10 Pac. 596; *Kansas City B. & I. Co. v. Wyandotte County*, 35 Kan. 557, 11 Pac. 360; *Lathrop v. Commercial Bank*, 8 Dana (Ky.), 114, 33 A. D. 481; *Frazier v. Willcox*, 4 Rob. (La.) 517; *Wellersburg & W. Plank Road Co. v. Young*, 12 Md. 476, 487; *Kennebec Co. v. Augusta Ins. & Banking Co.*, 6 Gray (Mass.), 204; *Conn. Mut. L. Ins. Co. v. Albert*, 39 Mo. 181; *Ferguson v. Soden*, 111 Mo. 208, 19 S. W. 727, 33 A. S. R. 512; *Mumford v. Amer. L. I. & T. Co.*, 4 N. Y. 463, 482; *Bard v. Poole*, 12 N. Y. 495; *Floyd v. Nat'l Loan & Invest. Co.*, 49 W. Va. 327, 38 S. E. 654, 54 L. R. A. 536, 87 A. S. R. 805; *Canadian Pac. Ry. v. W. U. T. Co.*, 17 Can. 151; *Conn. & P. R. R. v. Comstock*, 1 Rev. Leg. (Quebec) 589; *Howe Machine Co. v. Walker*, 35 Up. Can. Q. B. 37; *Coquillard v. Hunter*, 36 Up. Can. Q. B. 316.

²⁵ *Diamond Match Co. v. Roeber*, 106 N. Y. 473, 13 N. E. 419, 60 A. R. 464.

²⁶ *Wellersburg & W. P. R. Co. v. Young*, 12 Md. 476.

²⁷ *Blair v. Perpetual Ins. Co.*, 10 Mo. 559, 47 A. D. 129.

and will therefore, at suit of a creditor, be restrained from acting.²⁸

In Michigan it is provided by statute²⁹ that an act which a domestic corporation has no right to do, cannot be the consideration of a contract by a foreign corporation.³⁰ But under a similar Massachusetts statute, it was held that though no corporation could be organized for manufacturing and selling liquors, yet corporations may be formed to sell liquors. Consequently, a foreign corporation chartered to manufacture and sell liquors could sell them within the State, and such sale was good consideration for a mortgage.³¹

§ 109. A foreign corporation may become liable for Tort.

A foreign corporation is liable like any foreigner for torts committed within the jurisdiction.³² And it may not only be sued for damages for its torts, but it may be restrained by equity by means of an injunction, as for instance from infringing a trade name,³³ or from committing a nuisance.³⁴ The law by which a tortious act is judged is the law of the place where the corporation acts, not the law of the State of charter or of the forum.³⁵

“Whatever civil right of action by the law of the place attached to, or was given by, or arose from the act of killing in such case, would doubtless be transitory and follow the person; and might be enforced in this State. But if the law of the place gave no civil right of action for such cause, none of course would exist anywhere else at the time; and if the party causing the death never returned to this State, he could

²⁸ *Douglas v. A. M. L. Ins. Co.*, 25 Grant (Up. Can.), Ch. 379.

²⁹ Mich. Comp. L. § 6543.

³⁰ *Chapman v. Colby*, 47 Mich. 46, 10 N. W. 74.

³¹ *Enterprise Brewing Co. v. Grime*, 173 Mass. 252, 53 N. E. 855.

³² *Austin v. N. Y. & E. R. R.*, 25 N. J. L. 381 (personal injury by negligence); *People v. Central R. R. of N. J.*, 48 Barb. (N. Y.) 478 (trespass to land)

³³ *Gray v. Taper Sleeve Pulley Works*, 16 Fed. 436.

³⁴ *Seattle Gas & Electric Co. v. Citizens L. & P. Co.*, 123 Fed. 588.

³⁵ *Whitford v. Panama R. R.*, 23 N. Y. 465.

not, obviously, in any way be amenable to its law, or be subject to any liability under or by virtue of the same. Would his return to this State, *ipso facto*, subject him to an action under our statute? I think not." ³⁶

³⁶ E. D. Smith, J., in *Crowley v. Panama R. R.*, 30 Barb. (N. Y.) 99, 107.

CHAPTER V.

HOW FAR A CORPORATION MAY ACT IN A FOREIGN STATE.

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| <p>§ 111. Right of a corporation to act in a foreign State</p> <p>112. Acts contrary to public policy.</p> <p>113. Acts beyond the power of domestic corporations.</p> <p>114. Corporations formed to act in foreign States only.</p> <p>115. Right to exercise a franchise.</p> <p>116. A foreign corporation may be excluded from a State.</p> | <p>§ 117. A foreign corporation may be admitted on terms.</p> <p>118. A foreign corporation is subject to law of the State in which it acts.</p> <p>119. What laws of a State apply to foreign corporations.</p> <p>120. Not exempted from local law by law of charter.</p> |
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§ 111. Right of a corporation to act in a foreign State.

Whether a foreign corporation shall be allowed, through its agents, to act in any State evidently depends upon the law of that State; and if no constitutional provision is thereby transgressed, a foreign corporation may by law be forbidden to act. The common law, however, did not in general forbid a foreign corporation to act; and it may be laid down as a general rule that, in the absence of a statute forbidding it, a foreign corporation may through its agents do all acts that an individual might do, and may thereby acquire legal rights and become subject to obligations.¹

¹ *Bateman v. Service*, 6 App. Cas. 386; *Bank of Augusta v. Earle*, 13 Pet. 519, 10 L. ed. 274; *Tombigbee Ry. v. Kneeland*, 4 How. 16, 11 L. ed. 855; *Am. Waterworks Co. v. Farmers' Loan & Trust Co.*, 73 Fed. 956; *Oregonian Ry. v. Oregon Ry. & Nav. Co.*, 27 Fed. 277, 280; *Duke v. Taylor*, 37 Fla. 64, 19 So. 172, 53 A. S. R. 232, 31 L. R. A. 484; *Webster v. Oregon Short Line R. R.*, 6 Idaho, 312, 55 Pac. 661; *Frazier v. Willcox*, 4 Rob. (La.) 517, 532; *Life Assoc. of America v. Levy*, 33 La. Ann. 1203; *Thompson v. Waters*, 25 Mich. 214, 12 A. R. 243; *Williams v. Creswell*, 51 Miss. 817; *Taylor v. Alliance Trust Co.*, 71 Miss. 694, 15 So. 121; *Blair v. Perpetual Ins. Co.*, 10 Mo. 559, 47 A. D. 129; *Ferguson v. Soden*, 111 Mo. 208, 19 S. W. 727, 33 A. S. R. 512; *Curtis v.*

§ 112. Acts contrary to public policy.

This general principle is ordinarily qualified by the statement that a foreign corporation can do no act repugnant to the policy of the State or prejudicial to its interests.² It must be left to the courts of each State to say what acts are of this nature as gathered from the general tendency of its legislation; and in the absence of express legislation the courts will require clear evidence that the act attempted is against public policy. As is often said, the supposed public policy must be expressed "in some affirmative way."³ In the words of Chief Justice Christiancy:⁴ "The judiciary, whose province is only to declare, and not to make, the law, must be guided in their decision by the principle and policy adopted by the legislature of this State in reference to this question. And in ascertaining what this legislative policy is, we are to be guided not only by such express provisions as they have chosen to make, and the natural implication from them, but also by their silence, which may furnish as clear an indication of what that policy was intended to be, as can be drawn from what they have expressed, since, if they have made no provision at all upon the particular subject, or branch of the subject, or question involved, it may reasonably be inferred that they intended to adopt, and left to the courts to apply, the generally received principles of comity, and to that extent to

McCullough, 3 Nev. 202; *Moulin v. Trenton M. L. & F. Insurance Co.*, 25 N. J. L. 57; *Merrick v. Van Santvoord*, 34 N. Y. 208; *Newburg Petroleum Co. v. Weare*, 27 Oh. St. 343; *Second Nat Bank v. Hall*, 35 Oh. St. 158; *Kerchner v. Gettys*, 18 S. C. 521; *Lytle v. Custead*, 4 Tex. Civ. App. 490, 23 S. W. 451; *Less v. Ghio*, 92 Tex. 651, 51 S. W. 502; *Chicago T. & T. Co. v. Bashford*, (Wis.) 97 N. W. 940; *Can. Pac. Ry. v. W. U. Tel. Co.*, 17 Can. 151. That this rule was not universally accepted from the beginning appears in such a case as *Bank of Marietta v. Pindall*, 2 Rand. (Va.) 465.

² *Bank of Augusta v. Earle*, 13 Pet. 519, 589, 10 L. ed. 274; *Clarke v. Cent. R. R. & Banking Co.*, 50 Fed. 338, 344, 15 L. R. A. 683; *Seamans v. Temple & Co.*, 105 Mich. 400, 63 N. W. 408; *Van Steuben v. Cent. R. R. of N. J.*, 178 Pa. 367, 35 Atl. 992; 34 L. R. A. 577.

³ *Cowell v. Springs Co.*, 100 U. S. 55, 25 L. ed. 547; *Christian Union v. Yount*, 101 U. S. 356, 25 L. ed. 888; *Stevens v. Pratt*, 101 Ill. 206.

⁴ *Thompson v. Waters*, 25 Mich. 214, 12 A. R. 243.

adopt the foreign law, or rather to recognize the rights dependent upon such laws; and if they have chosen to leave the matter without any legislative provision, the case must be a very clear one indeed, which would authorize the courts to refuse such recognition, on the ground that it would be prejudicial to the interests of the State; since the legislature are the proper representatives of the public interest, and having the exclusive power to determine what shall be the public policy of the State; if they have chosen to make no enactment upon the subject, it is natural to infer they omitted to do so because they thought it unnecessary, and that the generally recognized principles would be sufficient for such cases."

It may be valuable to notice some of the decisions on this point as indicating what acts have been considered repugnant to public policy. These of course can be authority only in the jurisdictions where they were rendered; for the public policy of different States will vary with the difference in their legislation and in their habits of mind and thought. Acts regarded as not merely illegal, but forbidden because of their immorality, or their tendency to endanger the public, are of course against public policy. Thus a negro civilization society was (in 1857) held to be carrying on a work contrary to the policy of Georgia.⁵ And it is probably everywhere true now that a foreign corporation organized to carry on a lottery will not be allowed by its agents to carry on business in another State where a lottery is illegal.⁶ Acts which are restricted, though not absolutely forbidden, in the public interest may also be held not open to a foreign corporation. This was held in several early cases as to the banking business.⁷

There has been an interesting series of decisions in Illinois

⁵ *Amer. Col. Soc. v. Gartrell*, 23 Ga. 448.

⁶ *Wilkinson v. Gill*, 74 N. Y. 63, 30 A. R. 264; *Ormes v. Dauchy*, 82 N. Y. 443, 37 A. R. 583; *Peo. v. Nollke*, 29 Hun (N. Y.), 461; *Lemon v. Grosskopf*, 22 Wis. 447, 99 A. D. 58.

⁷ *Myers v. Manhattan Bank*, 20 Ohio, 283; *Bank of Marietta v. Pindall*, 2 Rand. (Va.) 465, 473; *Rees v. Conococheague Bank*, 5 Rand. (Va.) 326, 16 A. D. 755.

respecting the policy of the State as to allowing foreign corporations to hold land. The result appears to be that no corporation formed for the express purpose of holding land will be allowed to secure large tracts as an investment;⁸ but otherwise a foreign corporation is on the same footing as a private individual.⁹ It was held later that a foreign corporation which holds land will be restrained from selling it, if the result of the sale will be to create a monopoly which is contrary to the laws of the State.¹⁰

Where a corporation of another State has by its charter some powers which are against the public policy of the State in which it wishes to act, and some other powers which the State grants to its domestic corporations, it will be allowed to exercise the latter.¹¹

§ 113. Acts beyond the power of domestic corporations.

By the better opinion, the mere fact that the legislature has itself created no corporation, either by special charter or by general law, which has power to do the act in question is not enough to prove that the doing of it by a foreign corporation is against public policy. If such an act when done by a corporation is contrary to public policy, it must be so expressed in an affirmative statute. Thus where Congress forbade the chartering of corporations in the Territories, except for certain purposes, this was held not to prevent a foreign corporation, formed for another purpose, from carrying out that purpose in a Territory,¹² and so a corporation chartered in Pennsylvania to administer estates was allowed to sue in Delaware as administrator, though no Delaware corporation

⁸ *Carroll v. East St. Louis*, 67 Ill. 568, 16 A. R. 632. See *United States Trust Co. v. Lee*, 73 Ill. 142, 24 A. R. 236.

⁹ *Christian Union v. Yount*, 101 U. S. 352, 25 L. ed. 888; *Santa Clara Female Acad. v. Sullivan*, 116 Ill. 375, 56 A. R. 776.

¹⁰ *Harding v. American Glucose Co.*, 182 Ill. 551, 55 N. E. 577, 74 A. S. R. 189.

¹¹ *State v. N. O. Warehouse Co.*, 109 La. 64, 33 So. 82; *Enterprise Brewing Co. v. Grime*, 173 Mass. 252, 53 N. E. 855.

¹² *Cowell v. Springs Co.*, 100 U. S. 55, 25 L. ed. 547.

could act as administrator.¹³ "It cannot be said that the failure to provide for the organization of other corporations by general laws is an exclusion of foreign corporations of a like character, unless it shall be held that the failure to enact such general laws is an evidence that they are opposed to our policy. Mere absence of legislation authorizing the formation of a particular class of corporations, cannot be accepted as conclusive evidence that it is against public policy to create such corporations."¹⁴ And it was accordingly held, overruling an earlier case¹⁵ on this point, that the fact that no corporation could be created under general laws for loaning money did not prevent a foreign corporation from doing so.¹⁶

The contrary view has, however, been taken in some jurisdictions; and it has been held that no foreign corporation can do an act which no domestic corporation has been empowered to do, or at least no act which domestic corporations were formerly empowered to do by a statute since repealed, the repeal being held to indicate the legislative policy.¹⁷ So, in Missouri, it was held that a foreign railroad corporation could not build and maintain telegraph lines since no domestic corporation had been given that right;¹⁸ and in Pennsylvania it was held for the same reason that a foreign railroad corporation could not lease, in Pennsylvania, a line with which it did not connect, the only authority to lease other roads being given to domestic corporations and confined to a lease of connecting railroads.¹⁹

¹³ *Deringer v. Deringer*, 5 Houst. (Del.) 416, 1 A. S. R. 150. *Acc.*, *In re Galletly*, 10 Queensl. L. J. 74. But see *contra*, *In re Riley*, 21 New So. Wales Bkr. 7.

¹⁴ *Stevens v. Pratt*, 101 Ill. 206; and see *Commercial Union Ass. Co. v. Scammon*, 102 Ill. 46.

¹⁵ *U. S. Mortgage Co. v. Gross*, 93 Ill. 483.

¹⁶ *Stevens v. Pratt*, 101 Ill. 206.

¹⁷ *Empire Mills v. Alston Grocery Co.*, 4 Wills. (Tex.) 346, § 221, 15 S. W. 505, where it was alleged that the purpose in incorporating abroad was fraudulently to avoid the laws of the State.

¹⁸ *State v. Cook*, 171 Mo. 348, 362, 71 S. W. 829.

¹⁹ *Van Steuben v. Cent. R. R. of N. J.*, 178 Pa. 367, 35 Atl. 992, 34 L. R. A. 577, citing *Empire Mills v. Alston Grocery Co.*, *supra*.

§ 114. Corporations formed to act in foreign States only.

The mere fact that at the time of forming a corporation it is intended to do business in a foreign State, or that no business (except the formation of the corporation) is in fact done in the incorporating State, does not render the incorporation a nullity,²⁰ or prevent the corporation from acting in a foreign State.²¹ It is no fraud or evasion of the laws of a State for its citizens, intending to act only in their own State, to form themselves into a corporation under the laws of another State.²² As Judge Gray said, in *Lancaster v. Improvement Company*:²³ "If our citizens are attracted to other jurisdictions for purposes of incorporation, because of more favorable corporation or taxation laws, I cannot see in that fact, however, and in whatever sense, to be deplored, any reason that they should be prevented from employing here the corporate capital in the various channels of trade or manufacture. That, as it seems to me, would be a rather hurtful policy and one not to be attributed to the State."

²⁰ *Princess of Reuss v. Bos*, L. R. 5 H. L. 176; *Mo. Lead M. & S. Co. v. Reinhard*, 114 Mo. 218, 21 S. W. 488, 35 A. S. R. 746; *State v. Taylor*, 25 Oh. St. 279.

²¹ *Baughman v. National Water-works Co.*, 46 Fed. 4; *State v. Topeka Water Co.*, 61 Kan. 547, 60 Pac. 337; *Mo. Lead Min. & S. Co. v. Reinhard*, 114 Mo. 218, 21 S. W. 488, 35 A. S. R. 746; *Demarest v. Flack*, 128 N. Y. 205, 28 N. E. 645, 13 L. R. A. 854; *Hanna v. International Petroleum Co.*, 23 Oh. St. 622; *Lasater v. Purcell Mill & Elev. Co.*, (Tex. Civ. App.) 54 S. W. 425 (*semble*).

²² *Cumberland Tel. & Tel. Co. v. Louisville Home Tel. Co.*, 24 Ky. L. Rep. 1676, 72 S. W. 4 (*semble*); *Demarest v. Flack*, 128 N. Y. 205, 28 N. E. 645, 13 L. R. A. 854; *Lancaster v. Amsterdam Improvement Co.*, 140 N. Y. 576, 35 N. E. 964, 24 L. R. A. 322; *Oakdale Mfg. Co. v. Garst*, 18 R. I. 484, 28 Atl. 973, 49 A. S. R. 784, 23 L. R. A. 639. But see *Second Nat. Bank v. Lovell*, 2 Cincinnati Super. Ct. 397; *Hill v. Beach*, 12 N. J. Eq. 31; *Empire Mills v. Alston Grocery Co.*, 4 Wills. (Tex.) § 221, 15 S. W. 505, holding incorporators liable as partners. Even if the act of the incorporators in forming the corporation abroad were fraudulent, the better view is that it would make no difference in their right to do business as a corporation. *United States Vinegar Co. v. Schlegel*, 143 N. Y. 537, 33 N. E. 729; *Second Nat. Bank v. Hall*, 35 Oh. S. 158.

²³ 140 N. Y. 576, 35 N. E. 964, 24 L. R. A. 322.

But where the legislature which chartered a corporation forbade it to act within its own State, it was rightly held that the corporation could have no legal existence and could do no business elsewhere. "A corporation," the court said, "in order to have any legal or valid existence, must have a home, a domicile, a principal place of doing business, within the boundaries of the State which creates it. It may send agents into other States to do business, but it cannot migrate in a body. If it attempts to migrate in a body, to go beyond the jurisdiction of the laws which bind and hold it together, it dissolves into its original elements, and the persons who compose it become only individuals." "No rule of comity will allow one State to spawn corporations, and send them forth into other States to be nurtured, and do business there, when said first mentioned State will not allow them to do business within its own boundaries."²⁴

§ 115. Right to exercise a franchise.

A foreign corporation cannot without express permission exercise a franchise, since the right to do so depends upon the permission of the sovereign. Thus it cannot exercise the right of eminent domain,²⁵ nor the franchise of collecting tolls.²⁶ And where by statute the carrying on of a certain business is forbidden, except by permission of the State, a foreign corpo-

²⁴ Valentine, J., in *Land Grant Ry. v. Coffey County*, 6 Kan. 245, 253. See this case explained in *Mo. Lead Min. & S. Co. v. Reinhard*, 114 Mo. 218; 21 S. W. 488; 35 A. S. R. 746; distinguished in *State v. Topeka Water Co.*, 61 Kan. 547, 60 Pac. 337 (Doster, C. J., dissenting).

²⁵ *St. Louis & S. F. R. R. Co. v. Foltz*, 52 Fed. 627 (*semble*); *Saunders v. Bluefield W. W. & Imp. Co.*, 58 Fed. 133; *St. Louis & S. F. R. R. v. S. W. Tel. & Tel. Co.*, 121 Fed. 276; *Holbert v. St. L. K. C. & N. Ry.*, 45 Ia. 23; *Dodge v. Council Bluffs*, 57 Ia. 560, 10 N. W. 886. As the United States has the right of eminent domain within the States for some purposes, a corporation may be chartered by Congress and empowered to exercise the right of eminent domain for such purposes within a State. *U. P. Ry. v. B. & M. R. R. R.*, 1 McCr. 452, 3 Fed. 106.

²⁶ *Middle Bridge Co. v. Marks*, 26 Me. 326. But see *Mayor &c. of Columbus v. Rodgers*, 10 Ala. 37.

ration cannot carry on such business without permission.²⁷ But the right to acquire property is inherent in its nature of corporation, and is a function which may be exercised by any individual; no express permission of the legislature is needed for this purpose.²⁸ When territory is ceded from one State to another, a corporation of the former cannot continue to exercise a franchise within the ceded territory, since it does not become a corporation of the latter State; and the principle by which, upon a change of territorial jurisdiction, private rights of property are respected does not extend to mere privileges allowed by the former State.²⁹

By express permission of the State a foreign corporation may however exercise a franchise,³⁰ as for instance the right to take land by eminent domain.³¹

§ 116. A foreign corporation may be excluded from a State.

Although as we have seen a foreign corporation is ordinarily allowed to act by the common law, yet any State may (unless it is forbidden by constitutional provisions) by act of legislature, exclude a corporation created by another State from acting, through agents, within its territory.³² Foreign insurance companies, for instance, are frequently altogether excluded from a State.³³

§ 117. A foreign corporation may be admitted on terms.

As a foreign corporation may be absolutely excluded from a State, so it may be excluded unless it fulfils certain condi-

²⁷ *Hartford Fire Ins. Co. v. Raymond*, 70 Mich. 485, 38 N. W. 474 (insurance); *Peo. v. Howard*, 50 Mich. 239, 15 N. W. 101; *Bard v. Poole*, 12 N. Y. 495 (banking); *State v. Cook*, 171 Mo. 348, 71 S. W. 829 (tel. lines by R. R. Co.).

²⁸ *State v. B. C. & M. Ry.*, 25 Vt. 433, and see Chap. IX.

²⁹ *Myers v. Manhattan Bank*, 20 Ohio, 283. A statute of the latter State forbade any company doing a banking business which was "not incorporated by a law of this State."

³⁰ *Union B. R. R. v. East Tenn. & Ga. R. R.*, 14 Ga. 327.

³¹ *Infra*, § 232.

³² *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 28, 44 L. ed. 657, affirming a. c., 19 Tex. Civ. App. 1, 44 S. W. 936.

³³ *Amer. Ins. Co. v. Stoy*, 41 Mich. 385, 402, 1 N. W. 877.

tions; that is, it may be admitted on terms.³⁴ "Having no absolute right to recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows as a matter of course that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely, they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."³⁵ This principle is often used to regulate dealings by foreign insurance companies. Thus a foreign insurance company may be required, as condition of doing business in a State, to deposit a certain amount of bonds with a State official, for the protection of policy holders,³⁶ or otherwise to have a certain amount of assets invested within the State.³⁷ So its agents may be forbidden to make a rebate from the premium;³⁸ or the provisions of the policy may be dictated by the State, as by forbidding the forfeiture of a policy for immaterial misrepresentation.³⁹ And

³⁴ *Doyle v. Continental Ins. Co.*, 94 U. S. 535, 24 L. ed. 148; *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727, 28 L. ed. 1137; *Hooper v. California*, 155 U. S. 648, 39 L. ed. 297; *Orient Ins. Co. v. Daggs*, 172 U. S. 557, 43 L. ed. 552; *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 28, 44 L. ed. 657; *Fletcher v. N. Y. Life Ins. Co.*, 13 Fed. 526; *Woodson v. State*, 69 Ark. 521, 65 S. W. 465; *Keystone Driller Co. v. Superior Court*, 138 Cal. 238, 72 Pac. 98; *State v. Ins. Co.*, 115 Ind. 257, 17 N. E. 578; *Com. v. Read Phosphate Co.*, 23 Ky. L. Rep. 2284, 67 S. W. 45; *State v. Hammond Packing Co.*, 110 La. 180, 34 So. 368; *Tolerton & Stetson Co. v. Barck*, 84 Minn. 497, 88 N. W. 20; *Daggs v. Orient Ins. Co.*, 136 Mo. 382, 38 S. W. 85, 58 A. S. R. 638, 35 L. R. A. 227; *State v. Ins. Co.*, (Neb.) 99 N. W. 36; *People v. Formosa*, 131 N. Y. 478, 30 N. E. 492, 27 A. S. R. 612; *Central R. R. v. Georgia C. & I. Co.*, 32 S. C. 319 (*semble*); *State v. Phoenix Ins. Co.*, 92 Tenn. 420, 21 S. W. 893; *Canadian Pac. Ry. v. Western U. T. Co.*, 17 Can. 151; *Merritt v. Copper Crown Min. Co.*, 34 Nov. Sc. 416.

³⁵ *Field, J.*, in *Paul v. Virginia*, 8 Wall. 168, 181, 19 L. ed. 357.

³⁶ *Paul v. Virginia*, 8 Wall. 168, 19 L. ed. 357.

³⁷ *Granite State Mut. Aid Assoc. v. Porter*, 58 Vt. 581, 3 Atl. 545.

³⁸ *People v. Formosa*, 131 N. Y. 478, 30 N. E. 492, 27 A. S. R. 612.

³⁹ *Fletcher v. N. Y. Life Ins. Co.*, 13 Fed. 526. In *Massachusetts* and other

the agents may be required to retain money received by them for the company until its losses are adjusted, or until litigation in which it is a party is determined;⁴⁰ or to pay a twelve per cent. penalty for failure to pay a policy, and such penalty cannot be avoided by a stipulation that the policy shall be payable in the charter State.⁴¹

One of the earliest conditions imposed upon insurance companies was that its agents for effecting insurance should be its agents for receiving service of process; and as a result, that a foreign insurance company should be suable in a State in which it did business.⁴² This condition has now almost everywhere been so extended as to apply to all foreign corporations;⁴³ and is one which a State may properly enforce.⁴⁴ But if a corporation has complied with the terms imposed by the State, any attempt on the part of the State to change those terms would be void as impairing the obligations of contracts.⁴⁵

It is clear that as a State may impose terms upon foreign corporations, it may enjoin such corporations from using, within its limits, the name of a similar domestic corporation in any case in which the use of the name would mislead the public.⁴⁶ And as a corollary to the right of imposing terms it must have the right to revoke a license for the violation

States a standard form of policy is prescribed for all companies doing business within the State.

⁴⁰ *Phenix Ins. Co. v. Burdett*, 112 Ind. 204, 13 N. E. 705.

⁴¹ *Franklin Ins. Co. v. Villeneuve*, 25 Tex. Civ. App. 356, 60 S. W. 1041.

⁴² *Lafayette Ins. Co. v. French*, 18 How. 404, 15 L. ed. 451.

⁴³ See *post*, Ch. XI.

⁴⁴ *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727, 28 L. ed. 1137; *Cousens v. Lovejoy*, 81 Me. 467, 17 Atl. 495.

⁴⁵ *Com. v. Mobile & O. R. R.*, 23 Ky. L. Rep. 784, 64 S. W. 451; *contra (semble)* *Sandel v. Atlanta Mut. Life Ins. Co.*, 53 S. C. 241, 31 S. E. 230.

⁴⁶ *Philadelphia Trust, S. D. & Ins. Co. v. Phila. Trust Co.*, 123 Fed. 534; *International Trust Co. v. Internat. L. & T. Co.*, 153 Mass. 291, 26 N. E. 693, 10 L. R. A. 758; *Employees' Liability Assur. Corp. v. Employees' Liability Ins. Co.*, 16 N. Y. S. 397, 61 Hun, 552; *Am. Clay Mfg. Co. v. Am. Clay Mfg. Co. of N. J.*, 198 Pa. 189, 47 Atl. 936.

of terms,⁴⁷ and such revocation is not the infliction of a penalty.⁴⁸

§ 118. A foreign corporation is subject to law of the State in which it acts.

A foreign corporation may of course do nothing which is contrary to the law of the State in which it acts.⁴⁹ If, therefore, a law of the State forbids or regulates the acts of a foreign corporation, the law must be obeyed.⁵⁰ It is, however, sometimes difficult to determine whether a statute applies to all corporations or only to domestic corporations. Acts forbidden in a State under a penalty as contrary to public policy are of course forbidden to all corporations, foreign as well as domestic;⁵¹ and a foreign corporation is therefore subject to the provisions of the usury laws in the State in which it acts.⁵² It has been held in a few State courts that this is true although the contract contains a stipulation that the payment is to be

⁴⁷ *Waters-Pierce Oil Co. v. State*, 19 Tex. Civ. App. 1, 44 S. W. 936; *State v. Standard Oil Co.*, 61 Neb. 28, 84 N. W. 413, 87 A. S. R. 449.

⁴⁸ *State v. Standard Oil Co.*, 61 Neb. 28, 84 N. W. 413, 87 A. S. R. 449.

⁴⁹ *Bishop v. American P. Co.*, 157 Ill. 284, 41 N. E. 765, 48 A. S. R. 317; *Ohio Mut. Life Ins. & Tr. Co. v. Merchants' Ins. & Tr. Co.*, 11 Humph. (Tenn.) 1, 25.

⁵⁰ *Peo. v. Howard*, 50 Mich. 239, 15 N. W. 101; *Bard v. Poole*, 12 N. Y. 495.

⁵¹ *McGregor v. Erie Ry.*, 35 N. J. L. 119; but see *Cory v. State*, 55 Ga. 236; *McBride v. Fidelity & Cas. Co.*, 14 Tex. Civ. App. 280, 37 S. W. 1091.

⁵² *Hitchcock v. U. S. Bank*, 7 Ala. 386 (*semble*); *Falls v. U. S. Sav. Loan & Bld. Co.*, 97 Ala. 417, 13 So. 25, 38 A. S. R. 194, 24 L. R. A. 174; *Knox v. Bank of U. S.*, 26 Miss. 655 (*semble*); *Sokoloski v. New South B. & L. Assn.*, 77 Miss. 155, 26 So. 361; *Building & Loan Assn. v. Bilan*, 59 Neb. 458, 81 N. W. 308; *Anselm v. Am. Sav. & Loan Ass. (Neb.)*, 92 N. W. 745; *Southern L. Ins. & T. Co. v. Packer*, 17 N. Y. 51; *Floyd v. Nat. Loan & I. Co.*, 49 W. Va. 327, 38 S. E. 653, 54 L. R. A. 536, 87 A. S. R. 805. There is a difference of opinion whether National Banks are subject to the usury laws of the States. In *First Nat. Bank v. Lamb*, 50 N. Y. 95, 10 A. R. 438, it was held that they are; in *First Nat. Bank v. Garinghouse*, 22 Oh. St. 492, 10 A. R. 751, that they are not. The question in these cases was whether the whole debt should be forfeited for usury, under the State law, or only the interest, as provided in the national bank act. See also *Shunk v. First Nat. Bank*, 22 Oh. St. 508, 10 A. R. 762; *Tiffany v. Nat. Bank of Missouri*, 18 Wall. 409, 21 L. ed. 862.

made in the charter State where the interest is lawful;⁵³ but by the great weight of authority a contract is not void for usury if it is permitted by the law, either of the State of making, or of the State of performance.⁵⁴ If, therefore, the foreign corporation *bona fide* selects its own State as the State of performance, and the contract is there valid, the usury law of the State of contracting does not affect the obligation.⁵⁵ If, however, the place of performance is not *bona fide* agreed upon, but is named as a means of evading the usury laws of the place of contracting, the contract is usurious.⁵⁶

In some jurisdictions, however, greater stress is laid on the law of the place of performance; and a contract good by the law of the place of contracting but void by that of the place of performance is held invalid, unless the parties are shown to have intended otherwise. In these States the law of the State in which the corporation acts does not apply unless the usurious payment is to be made within the State.⁵⁷

⁵³ Nat'l Mut. Bldg. & Loan Ass. v. Brahan, 80 Miss. 407, 31 So. 840, 57 L. R. A. 793, and cases cited; Washington Nat. Bldg. Loan & Invest. Ass. v. Stanley, 38 Or. 319, 63 Pac. 489, 80 A. S. R. 793, 58 L. A. R. 816; Pacific States S. L. & Bldg. Co. v. Hill, 40 Or. 280, 67 Pac. 103, 91 A. S. R. 477, 56 L. R. A. 163.

⁵⁴ Andrews v. Pond, 13 Pet. 65, 10 L. ed. 61; Junction R. R. v. Bank of Ashland, 12 Wall. 226, 20 L. ed. 385; Andruss v. People's B. L. & S. Assoc., 94 Fed. 575; Dygert v. Vermont L. & T. Co., 94 Fed. 913; Pancoast v. Travelers' Ins. Co., 79 Ind. 172 (cf. Smith v. Muncie Nat. Bank, 29 Ind. 158); Brown v. Freeland, 34 Miss. 181; Coad v. Home Cattle Co., 32 Neb. 761, 49 N. W. 757, 29 A. S. R. 465; Townsend v. Riley, 46 N. H. 300; U. S. S. & L. Co. v. Shain, 8 N. D. 136, 77 N. W. 1006; Thornton v. Dean, 19 S. C. 583, 45 A. R. 796; Sharp v. Davis, 7 Baxt. (Tenn.) 607; Fisher v. Otis, 3 Chand. (Wis.) 83.

⁵⁵ Manship v. New South B. & L. Assoc., 110 Fed. 845; U. S. Sav. & L. Co. v. Harris, 113 Fed. 27.

⁵⁶ Andrews v. Pond, 13 Pet. 65, 10 L. ed. 61; Nat. Mut. B. & L. Assoc. v. Burch, 124 Mich. 57, 82 N. W. 837; Meroney v. Atlanta N. B. & L. Assoc., 112 N. C. 842, 17 S. E. 637.

⁵⁷ Jackson v. Amer. Mtg. Co., 88 Ga. 756, 15 S. E. 812; Odom v. N. E. Mtg. Sec. Co., 91 Ga. 505, 18 S. E. 131; Underwood v. Amer. Mtg. Co., 97 Ga. 238, 24 S. E. 847; Dickinson v. Edwards, 77 N. Y. 573, 33 A. R. 671. (See Sheldon v. Haxtun, 91 N. Y. 124.)

§ 119. What laws of a State apply to foreign corporations.

Laws of a general nature which concern not the inner affairs of the corporation but their manner of doing ordinary acts would usually be held to apply to foreign corporations. Thus a statute to regulate tolls charged by a corporation,⁵⁵ or by its assignees,⁵⁶ would apply to a foreign corporation; so would a statute requiring corporations to show their books on occasion,⁶⁰ and one regulating proceedings where banks are parties.⁶¹ On this principle foreign corporations have been held subject to local laws regulating the transfer of shares.⁶² So a local law forbidding corporations to enter into partnership with other corporations, applies to foreign corporations.⁶³

On the other hand, certain statutes which are interpreted as passed to regulate the management of corporate affairs, have been held not to apply to foreign corporations. Thus a statute requiring the vote of the stockholders of a corporation in order to mortgage its property, applies only to domestic corporations;⁶⁴ and an act forbidding assignments by insolvent corporations does not prevent such assignments by foreign corporations, since the courts of the State could not fully administer the assets, and the object of the act could therefore not be obtained.⁶⁵ And it has been held generally in New

⁵⁵ *Clarke v. Cent. R. R. & Banking Co.*, 50 Fed. 338, 15 L. R. A. 683; *McGregor v. Erie Ry.*, 35 N. J. L. 115; *Chapman v. Hallwood Cash Register Co.*, (Tex. Civ. App.) 73 S. W. 969.

⁵⁶ *Stetson v. City Bank*, 2 Oh. St. 167.

⁶⁰ *Winter v. Baldwin*, 89 Ala. 483.

⁶¹ *Lewis v. Bank of Kentucky*, 12 Ohio, 132, 40 A. D. 460.

⁶² *London, Paris & American Bank v. Aronstein*, 117 Fed. 601.

⁶³ *Bishop v. American P. Co.*, 157 Ill. 284, 41 N. E. 765, 48 A. S. R. 317.

⁶⁴ *Saltmarsh v. Spaulding*, 147 Mass. 224, 17 N. E. 316. So of an act requiring the registration of debentures of a company. *Braithwaite v. McArthur*, 19 New So. Wales Eq. 158; *Bergl v. Mt. Chalmers Copper Mines*, (1902) Queens. St. Rep. 35. *Contra*, *In re King of the West G. M. Co.*, 1 Western Austr. R. (Law) 70.

⁶⁵ *Vanderpoel v. Gorman*, 140 N. Y. 563, 35 N. E. 932, 37 A. S. R. 601, 24 L. R. A. 548; *Lane v. Wheelright*, 23 N. Y. S. 596, 69 Hun, 180; *Standard Nat. Bank v. Garfield Nat. Bank*, 56 App. Div. 43, 67 N. Y. S.

York that a general statute which confers powers on corporations refers only to domestic corporations.⁶⁶ It has been held in Mississippi that a statute allowing building and loan associations to charge more than the legal rate of interest does not apply to foreign corporations,⁶⁷ and a State statute extending the benefit of the insolvency law to corporations was held not to apply to foreign corporations.⁶⁸

Where the law of a State forbids the taking of land by a corporation, a foreign corporation is to be treated just as a domestic one would be. In New York no corporation may take land by devise unless expressly authorized by its charter so to take. Under this statute a devise of land to the United States was held void;⁶⁹ and one to the city of St. Louis.⁷⁰ By the mortmain act of Pennsylvania, land of a corporation may be declared forfeited by the State; but unless this is done the holding is lawful. Under this act a foreign corporation may hold land, so long as the State takes no action in the matter.⁷¹

§ 120. Not exempted from local law by law of charter.

The fact that the corporation is expressly permitted to do the act by its charter or by the laws of its own State will not alter the case. Thus a corporation cannot in a foreign State, make a loan usurious there, though by its charter the rate of interest is expressly allowed;⁷² nor, in the charter State, execute a valid mortgage of property in a foreign State, if

472; *East Side Bank v. Columbus Tanning Co.*, 170 Pa. 1. See *contra*, *Lamb v. Russell*, 81 Miss. 382, 32 So. 916.

⁶⁶ *Estate of Prime*, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 713.

⁶⁷ *National Mut. B. & L. Ass. v. Pinkston*, (Miss.) 31 So. 834.

⁶⁸ *Whitcomb v. Robbins*, 69 Vt. 477, 38 Atl. 233.

⁶⁹ *United States v. Fox*, 94 U. S. 315, 24 L. ed. 192.

⁷⁰ *Boyce v. St. Louis*, 29 Barb. (N. Y.) 650.

⁷¹ *Runyon v. Coster*, 14 Pet. 122, 10 L. ed. 382.

⁷² *Falls v. U. S. Sav. L. & B. Co.*, 97 Ala. 417, 13 So. 25, 38 A. S. R. 194, 24 L. R. A. 174; *Sokoloski v. New South B. & L. Ass.*, 77 Miss. 155, 26 So. 361; *Interstate Sav. & L. Ass. v. Strine*, 58 Neb. 133, 59 Neb. 27, 80 N. W. 45; *Building & L. Ass. v. Bilan*, 59 Neb. 458, 81 N. W. 308.

that State does not allow it.⁷³ A foreign corporation cannot claim a certain exemption from taxation because it is allowed such exemption by the laws of its own State;⁷⁴ nor can a foreign corporation, though authorized by its charter to deal in real estate in a manner not authorized in Texas, exercise that right in Texas.⁷⁵

A foreign railroad corporation cannot build and maintain telegraph lines, though allowed by its charter to do so, when domestic railroad corporations are not so allowed,⁷⁶ nor can a foreign corporation, though given power by its charter, acquire water rights in another State if it has not complied with the law of that State.⁷⁷ So where, by the laws of Illinois, a stockholder in a building association had a right at any time, upon withdrawing from the association, to receive back the payments he had made, it was held that such an association, chartered in New Hampshire, but doing business in Illinois, was subject to this provision though a clause denying the right was contained in the stock itself.⁷⁸

⁷³ *Fowler v. Bell*, 90 Tex. 150, 37 S. W. 1058, 59 A. S. R. 787, 39 L. R. A. 254.

⁷⁴ *Peo. v. Coleman*, 135 N. Y. 231, 31 N. E. 1022.

⁷⁵ *Galveston Land & I. Co. v. Perkins*, (Tex. Civ. App.) 26 S. W. 256.

⁷⁶ *State v. Cook*, 171 Mo. 348, 71 S. W. 829.

⁷⁷ *Rio Grande & W. Ry. v. Telluride Power Transmission Co.*, 23 Utah, 22, 63 Pac. 995.

⁷⁸ *Granite State Prov. Assoc. v. Lloyd*, 145 Ill. 620, 34 N. E. 142.

CHAPTER VI.

CONSTITUTIONAL PROTECTIONS OF A FOREIGN CORPORATION.

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| <p>§ 121. State jurisdiction over foreign corporations limited.</p> <p>122. Terms affecting jurisdiction of the Federal courts.</p> <p>123. State regulation of corporations dealing in patents.</p> <p>124. Obligation of contracts.</p> <p>125. Privileges and immunities of citizens.</p> <p>126. Equal protection of the laws.</p> | <p>§ 127. Taking property.</p> <p>128. Interfering with interstate commerce.</p> <p>129. Corporations engaged in interstate commerce; transportation.</p> <p>130. Trade.</p> <p>131. Manufacture.</p> <p>132. Insurance.</p> <p>133. What interference is lawful.</p> |
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§ 121. State jurisdiction over foreign corporations limited.

The absolute power which according to the common law each State has over the actions of a foreign corporation within it may be limited by the Constitution of the United States; but some express limitation must be found, or the power over the foreign corporation is unlimited. In the absence of a constitutional prohibition, a State may impose conditions upon foreign corporations as extensively as upon domestic corporations.¹ This power of the State is, however, confined to control of actions of the corporation within the State; the legislature has no control over actions outside the State, and can in no way prevent a foreign corporation from acting elsewhere, so long as it does not affect conditions within the State. Thus a State, under the guise of regulating a foreign insurance company, cannot forbid and punish the making of a contract outside the State, though it is to insure property inside the State.² To forbid such a thing, the court said,

¹ *Orient Ins. Co. v. Daggs*, 172 U. S. 557, 43 L. ed. 552; *New York L. Ins. Co. v. Cravens*, 178 U. S. 389, 44 L. ed. 1116.

² *Allgeyer v. Louisiana*, 165 U. S. 578, 41 L. ed. 832.

would be "an improper and illegal interference with the conduct of the citizen, although residing in Louisiana, in his right to contract and to carry out the terms of a contract validly entered into outside and beyond the jurisdiction of the State," which in another place the court said was an unconstitutional deprivation of liberty.³

But on the other hand, where a foreign corporation doing business in Nebraska went into Iowa and there sued a Nebraska debtor and garnisheed a railroad company which owed wages to the debtor for services rendered in Nebraska, thereby evading the Nebraska exemption laws, it was held that the corporation could be sued in Nebraska to recover the money thus obtained, on a Nebraska statute which gave such a remedy for the evasion of its exemption laws. The distinction made by the court was that though the garnishment was in Iowa, the debt was situated in Nebraska, and the defendant had therefore violated Nebraska law by interfering with property in that State.⁴ The court said: "The general principle is conceded that the law of the place where an act is done determines its validity; but the tort complained of was not committed in Iowa. The tort consisted in seizing property in Nebraska, exempt under the laws of Nebraska. The plaintiff in error was enabled to do this by instituting proceedings in another State. But the tort consisted not in instituting those proceedings in Iowa. A suit might rightfully be begun there *in personam* had Fleming brought himself within the jurisdiction of the Iowa courts. No action would have arisen had the property attached been situated in Iowa, or in a State other than Nebraska; but the wrong was in seizing the debt situated in Nebraska, payable in Nebraska, to a citizen of Nebraska. The statute in this respect is not confined to actions begun in another State, but extends to every attach-

³ Acc. *McBride v. Fidelity & Casualty Co.*, 14 Tex. Civ. App. 230, 37 S. W. 1091.

⁴ *Singer Mfg. Co. v. Fleming*, 39 Neb. 679, 58 N. W. 226, 23 L. R. A. 210, 42 A. S. R. 613.

ment or garnishment of exempt wages, whether the proceeding be instituted in this State or elsewhere."

§ 122. Terms affecting jurisdiction of the Federal courts.

There is a constant desire among the States to subject foreign corporations to the same control as domestic corporations. One great obstacle to this result is the jurisdiction which the Federal courts may exercise in controversies between a foreign corporation and a citizen of the State. Naturally efforts have been made to take away the right of removal to the Federal courts, and to substitute the exclusive jurisdiction of the State courts. The great difficulty in the way is that such legislation and agreements are invalid as ousting the Federal courts of their jurisdiction. Of course any direct enactments forbidding removal would be declared unconstitutional; and an agreement made not to exercise this right of removal is void.⁵ Wisconsin passed an act granting a permit to foreign corporations on condition of their filing an agreement not to remove any cause to Federal courts. The Home Insurance Company filed such an agreement and received its permit. It afterwards wished to remove an action to the Federal courts. The Supreme Court of Wisconsin held that the corporation after filing the agreement was estopped to set up its foreign citizenship.⁶ But on appeal this decision was reversed in the Supreme Court of the United States.⁷ The court laid down these rules: 1. The Constitution of the United States secures to citizens of another State than that in which suit is brought, an absolute right to remove their cases into the Federal courts, upon compliance with the terms of the act of 1789. 2. The statute of Wisconsin is an obstruction to this right, is repugnant to the Constitution of

⁵ *Moore v. Chicago, S. P. & M. & O. Ry.*, 21 Fed. 817; *Chicago, M. & S. P. Ry. v. Becker*, 32 Fed. 849; *B. & O. R. R. v. Cary*, 28 Oh. St. 208. But see *contra*, *Glen Falls Ins. Co. v. Judge*, 21 Mich. 577, 4 A. R. 504.

⁶ *Morse v. Home Ins. Co.*, 30 Wis. 496, 11 A. R. 580.

⁷ *Insurance Co. v. Morse*, 20 Wall. 445, 22 L. ed. 365.

the United States, and the laws in pursuance thereof, and is illegal and void. 3. The agreement of the insurance company derives no support from an unconstitutional statute and is void as it would be had no such statute been passed.⁸

It is to be observed that the last resolution alone was required for the decision of the case; and it was held in a later case in Wisconsin that the Supreme Court of the United States had not declared the statute unconstitutional—all that was said upon that point being *obiter*. The court in that case decided that the company, having removed a suit to the Federal court, and therefore broken the condition upon which it was allowed to do business in the State, might be excluded.⁹ And a company thus excluded having applied in the Federal court for an injunction against exclusion, the majority of the Supreme Court held that it should not be granted.¹⁰ Mr. Justice Hunt said: "The effect of our decision in this respect is that the State may compel the foreign company to abstain from the Federal courts, or to cease to do business in the State. It gives the company the option. This is justifiable, because the complainant has no constitutional right to do business in that State; that State has authority at any time to declare that it shall not transact business there."

In *Barron v. Burnside*,¹¹ a later case, a statute of Iowa required that every foreign corporation should make an application for a permit, application to be accompanied by a stipulation that the permit should be subject to each of the provisions of the act. One of the provisions was that the permit should be void in case the corporation removed any action from State to Federal courts. Under this act a locomotive engineer was arrested because the railway corporation

⁸ See *acc. Rece v. Newport News & M. V. Co.*, 32 W. Va. 164, 9 S. E. 212, 3 L. R. A. 572. See also *Barling v. Bank of B. N. A.*, 50 Fed. 260.

⁹ *State v. Doyle*, 40 Wis. 175, 22 A. R. 692.

¹⁰ *Doyle v. Continental Ins. Co.*, 94 U. S. 535, 24 L. ed. 148.

¹¹ 121 U. S. 186, 30 L. ed. 915; followed, *Southern Pacific Co. v. Denton*, 146 U. S. 202, 36 L. ed. 942; *Barrow S. S. Co. v. Kane*, 170 U. S. 100, 42 L. ed. 964.

which employed him had refused to apply for a permit. The Supreme Court of the United States declared the arrest unlawful on the ground that the statute was unconstitutional; following *Home Ins. Co. v. Morse*, and explaining *Doyle v. Continental Ins. Co.*, as recognizing the right of the State to exclude the corporation, but not to prevent the removal of suit. This case was followed in Texas, in the case of a similar statute.¹²

The distinction is a difficult one to apply; nor have the later cases tended to clear it up. In *Barrow Steamship Company v. Kane*,¹³ Mr. Justice Gray said: "Statutes requiring foreign corporations, as a condition of being permitted to do business within the State, to stipulate not to remove into the courts of the United States suits brought against them in the courts of the State, have been adjudged to be unconstitutional and void."¹⁴ And Mr. Justice Harlan said very broadly, in *Blake v. McClung*,¹⁵ "generally speaking, the State has the power to prescribe the conditions upon which foreign corporations may enter its territory for purposes of business. Such a power cannot be exerted with the effect of defeating or impairing rights secured to citizens of the several States by the supreme law of the land. Indeed, all the powers possessed by a State must be exercised consistently with the privileges and immunities granted or protected by the Constitution of the United States." In the latest case in which the point was raised Mr. Justice Peckham said:¹⁶ "In *Doyle v. Continental Insurance Co.*, it was . . . decided that an injunction to restrain a State officer from revoking and cancelling a license to a foreign company to do business within the State, because the company has, contrary to the State statute,

¹² *Texas Land & Mtg. Co. v. Worsham*, 76 Tex. 556, 13 S. W. 212.

¹³ 170 U. S. 100, 111, 42 L. ed. 964.

¹⁴ Citing *Home Ins. Co. v. Morse*, 20 Wall. 445, 22 L. ed. 365; *Barron v. Burnside*, 121 U. S. 186, 30 L. ed. 915; *Southern Pac. Co. v. Denton*, 146 U. S. 202, 36 L. ed. 942.

¹⁵ 172 U. S. 239, 254, 43 L. ed. 432.

¹⁶ *Cable v. United States Life Ins. Co.*, 191 U. S. 288, 307.

removed a case from the State to the Federal court, would not be granted, and it was remarked that, as the State had the right to exclude a foreign insurance company, the means by which she caused such exclusion or the motives of her action were not the subject of judicial inquiry. Whether this case has been shaken by the subsequent cases of *Barron v. Burnside*, *Blake v. McClung* and *Dayton Coal & Iron Company v. Barton*,¹⁷ it is not material here to discuss. It has from an early day been held that a corporation created by one State could transact business in another State only with the consent, express or implied, of the latter State, and that such consent might be accompanied by such conditions as the latter State might think fit to impose, provided they were not repugnant to the Constitution or laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State free from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defence."¹⁸

On the whole, it would seem that the decision in *Doyle v. Continental Insurance Co.* is not affected by the later cases; and that, while a State may not require an agreement not to remove a suit to the Federal courts, it may enforce a regulation by which a foreign corporation so removing a suit may be for that reason excluded from doing further business in the State.

§ 123. State regulation of corporations dealing in patents.

The question has been repeatedly raised in Indiana whether a corporation engaged in the manufacture or sale of a patented article could be subjected to State restrictions. It was held in *Grover & Baker Sewing Machine Company v. Butler*¹⁹ that

¹⁷ 183 U. S. 23, 25, 46 L. ed. 61.

¹⁸ Citing *Lafayette Ins. Co. v. French*, 18 How. 404, 407, 15 L. ed. 451; *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 28, 44 L. ed. 657; *New York Life Ins. Co. v. Cravens*, 178 U. S. 389, 401, 44 L. ed. 1116; *Hancock Mutual Life Ins. Co. v. Warren*, 181 U. S. 73, 76, 45 L. ed. 755.

¹⁹ 53 Ind. 454, 21 A. R. 200. Acc. *Walter A. Wood M. & R. M. Co. v. Caldwell*, 54 Ind. 270, 23 A. R. 641; *Shook v. Singer Mfg. Co.*, 61 Ind. 520.

an act requiring a foreign corporation to have a known place of business and an officer on whom process might be served, did not apply to corporations engaged in the manufacture or sale of articles covered by letters patent; though in a later case it was said that the fulfillment of certain other requirements was necessary.²⁰ But it seems clear that the issuing of letters patent under the laws of the United States will not give the patentee a right to use the patented article in contravention to the local regulations of the State;²¹ and for the same reason it would seem that a corporation manufacturing the patented article would be bound by such local regulations as did not restrict the use of the article. And so it was finally held in Indiana.²²

But it has very properly been held that a statute which required one offering for sale a patent right to file certain papers was unconstitutional; for it was an unjustifiable interference with property in the patent-right itself.²³

The limits of the right of a State to restrict the sale of a patented article are discussed in *Webber v. Virginia*,²⁴ in which it was held that all tax and license laws of the State would be valid in the case of a patented article which would be valid as applied to any other article; the right of the inventor to his discovery being the only right which could not be interfered with. Mr. Justice Field said: "The right conferred by the patent laws of the United States to inventors to sell their inventions and discoveries does not take the tangible property, in which the invention or discovery may be exhibited or carried into effect, from the operation of the tax and license laws of the State. The combination of dif-

²⁰ *Domestic Sewing Machine Co. v. Hatfield*, 58 Ind. 187.

²¹ *Patterson v. Kentucky*, 97 U. S. 501, 24 L. ed. 1115, citing, *Vannini v. Paine*, 1 Harr. (Del.) 65; *Livingston v. Van Ingen*, 9 Johns. (N. Y.) 507; *Jordan v. Dayton*, 4 Ohio, 294.

²² *Toledo Agric. Works v. Work*, 70 Ind. 253.

²³ *Ex parte Robinson*, 2 Biss. 309, Fed. Cas. No. 11,932; *Hollida v. Hunt*, 70 Ill. 109, 22 A. R. 63; *Cranson v. Smith*, 37 Mich. 309, 26 A. R. 514.

²⁴ 103 U. S. 344, 26 L. ed. 565.

ferent materials so as to produce a new and valuable product or result, or to produce a well-known product or result more rapidly or better than before, which constitutes the invention or discovery, cannot be forbidden by the State, nor can the sale of the article or machine produced be restricted, except as the production and sale of other articles, for the manufacture of which no invention or discovery is patented or claimed, may be forbidden or restricted. The patent for a dynamite powder does not prevent the State from prescribing the conditions of its manufacture, storage and sale, so as to protect the community from the danger of explosion. A patent for the manufacture and sale of a deadly poison does not lessen the right of the State to control its handling and use. The legislation respecting the articles which the State may adopt after the patents have expired, it may equally adopt during their continuance. It is only the right to the invention or discovery, the incorporeal right, which the State cannot interfere with. Congress never intended that the patent laws should displace the police powers of the States, meaning by that term those powers by which the health, good order, peace and general welfare of the community are promoted. Whatever rights are secured to inventors must be enjoyed in subordination to this general authority of the State over all property within its limits.”²⁵

§ 124. Obligation of contracts.

The States are of course bound in their dealings with foreign corporations by all general provisions of the Constitution of the United States which apply to the States in all their actions. Thus the provision by which a State is forbidden to impair the obligation of a contract prevents a State from imposing upon a foreign corporation conditions which will result in discharging citizens of the State from their contract obligations. Thus where a foreign corporation has been allowed to make a contract in the State, the State cannot exclude the

²⁵ See to the same effect, *State v. Bell Telephone Co.*, 36 Oh. St. 296.

corporation in such a way as to affect the validity of the contract.²⁶ And conversely the State cannot by imposing a tax upon debts owed by the corporation and requiring the corporation to deduct the amount of the tax from the debt discharge the corporation from the full obligation of its contract.²⁷

Nor can a State by exercising its control over a foreign corporation impair the obligation of its contract with the corporation. In the leading case on this point it appeared that the legislature of Pennsylvania had given the New York and Erie Railroad Company authority to construct its road through part of Pennsylvania; providing for taxation and for rates on coal. A right was reserved to repeal the permission if the company should be found by the Supreme Court to have violated any of the provisions of the act. After the road had been completed, the legislature passed an act taxing the bonds of the company owned by citizens of Pennsylvania, and requiring the treasurer of the company to deduct the amount of the tax from the payment of interest on the bonds. This requirement was held unconstitutional, as an impairment of the obligation of its contract with the company.²⁸ Mr. Justice Harlan said: "Pennsylvania cannot withdraw the assent which it gave, upon a valuable consideration, to the construction and operation of the defendant's road within its limits. Nor can the right of the company to enjoy the privileges so obtained be burdened with conditions not prescribed in the acts of 1841 and 1846, except such as the State, in the exercise of its police powers, for purposes of taxation, and for other public objects, may legally impose in respect to business carried on and property situate within its limits."

The important limitations of the doctrine of this case, as suggested in the last paragraph, must be noticed. The con-

²⁶ *Bedford v. Eastern B. & L. Assoc.*, 181 U. S. 227, 45 L. ed. 834.

²⁷ *State Tax on Foreign-Held Bonds*, 15 Wall. 300, 21 L. ed. 179.

²⁸ *New York, L. E. & W. R. R. v. Pennsylvania*, 153 U. S. 628, 38 L. ed. 846.

tract impliedly made by the State upon the admission of the corporation is subject to the ordinary legislation of the State; a statute passed for a public purpose would not usually be objectionable, unless it attempted to influence the action of the corporation outside the State. The decision of this case, in fact, rested on the attempt of Pennsylvania to direct the action in New York of an official of a New York corporation. This was clearly brought out in the opinion. "The contract in question left unimpaired the power of the state to establish such reasonable regulations as it deemed proper, touching the management of the business done and the property owned by the railroad company in Pennsylvania, which did not materially interfere with or obstruct the substantial enjoyment of the rights previously granted. But the fourth section of the act of 1885 is not within that category. It assumes to do what the state has no authority to do,—to compel a foreign corporation to act, in the state of its creation, as an assessor and collector of taxes due in Pennsylvania from residents of Pennsylvania. . . . The fallacy of the contrary view is in the assumption that this railroad company, by purchasing from Pennsylvania the privilege of constructing and operating a part of its road through the territory of that state, thereby impliedly agreed to submit to such regulations as that state should, at any subsequent period, adopt in respect to the mode in which it should, in the state of New York, apply money in its hands in discharge of the obligation to pay interest to the holders of its bonds residing in Pennsylvania. But, for the reasons stated, this assumption is unwarranted by any sound principle of law, or by the circumstances under which the railroad company obtained the assent of Pennsylvania to build and maintain its road through that state.

"Counsel for the state insisted that the present case is controlled by *Bell's Gap Railroad v. Pennsylvania*,²⁹ reaffirmed in *Jennings v. Coal Co.*³⁰ It is only necessary to observe that

²⁹ 134 U. S. 232, 33 L. ed. 892.

³⁰ 147 U. S. 147, 37 L. ed. 116.

the corporations which complained in those cases of the tax assessed, under a Pennsylvania statute, upon their loans held by residents of Pennsylvania, were Pennsylvania corporations. No question arose in either of those cases as to the authority of Pennsylvania to make a corporation of another state an assessor or collector of taxes assessed by or under the authority of Pennsylvania against residents of Pennsylvania. Nor does the case now before us involve any question as to the extent to which the state may tax property within its limits belonging to the railroad company."

On the authority of this case it was held that where a foreign railroad company had been permitted to construct its line in Kentucky, the State could not afterwards require it to accept a charter from Kentucky as a condition of its continuance in the State.³¹ But obviously it is not impairing the obligation of a contract to require a foreign corporation to appoint a local agent as a condition of further continuance in the State; for that is clearly a measure of local police which may be rightfully required by the State.³² So where the statute has required the corporation to consent to the service of process on a State officer, and afterwards provides for service on another officer, it is only a change of remedy, not an impairment of the obligation of the contract.³³ And of course where the condition is expressly set out in the original statute, the State may enforce it.³⁴

§ 125. Privileges and immunities of citizens.

By the Constitution of the United States³⁵ "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." As has been seen,³⁶ a cor-

³¹ *Com. v. Mobile & O. R. R.*, 23 Ky. L. Rep. 784, 64 S. W. 451.

³² *Com. v. Parlin & O. Co.*, (Ky.) 80 S. W. 791; *Sandel v. Atlanta Mut. L. I. Co.*, 53 S. C. 241, 31 S. E. 230.

³³ *Johnston v. Mutual R. F. L. I. Co.*, 87 N. Y. S. 438.

³⁴ *Illinois B. & L. Assoc. v. Walker*, (Tenn. Ch.) 42 S. W. 191.

³⁵ Art. 4, § 2.

³⁶ *Ante*, § 79.

poration is not included in the term *citizen* in this provision, and no corporation therefore can claim under this provision the right to exercise a privilege in one State to which it is entitled in another.

§ 126. Equal protection of the laws.

The Fourteenth Amendment to the Constitution of the United States provides that no State "shall deny to any person within its jurisdiction the equal protection of the laws." Under this Amendment a corporation is a "person."³⁷ But until the corporation comes within the jurisdiction of a State the provision does not apply; and so long as the corporation has not yet received permission from the State to act within its borders, it has not come within its jurisdiction. The imposition of any condition whatsoever upon a corporation desiring to enter the State is therefore not within the constitutional limitation.³⁸ "The State is not prohibited from discriminating in the privileges it may grant to foreign corporations as a condition of their doing business or hiring offices within its limits, provided always such discrimination does not interfere with any transaction by such corporations of interstate or foreign commerce. It is not every corporation, lawful in the State of its creation, that other States may be willing to admit within their jurisdiction or consent that it have offices in them; such, for example, as a corporation for lotteries. And even where the business of a foreign corporation is not unlawful in other States the latter may wish to limit the number of such corporations, or subject their business to such control as would be in accordance with the policy governing domestic corporations of similar character. The States may, therefore, require for the admission within their limits of the corporations of other States, or of any number of them, such conditions as they may choose, without acting

³⁷ *Ante*, § 81.

³⁸ *Dugger v. Mechanics' & T. I. Co.*, 95 Tenn. 245, 32 S. W. 5, 28 L. R. A. 796.

in conflict with the concluding provision of the first section of the Fourteenth Amendment. . . . The only limitation upon this power of the State to exclude a foreign corporation from doing business within its limits, or hiring offices for that purpose, or to exact conditions for allowing the corporation to do business or hire offices there, arises where the corporation is in the employ of the Federal government, or where its business is strictly commerce, interstate or foreign.”³⁹

So, where a foreign insurance company was doing business in New York under a license renewable by the law of New York every year, it was held to be within the power of New York to impose new conditions. For the corporation was within the jurisdiction of New York only for a year; at the end of the year the corporation ceased to have the power to act within the State, and, therefore, to be within the jurisdiction, until it complied with the new conditions.⁴⁰ “It could not be of right within such jurisdiction, until it should receive the consent of the State to its entrance therein under the new provisions, and such consent could not be given until the tax, as a license fee for the future, should be paid.”⁴¹

The requirement of “equal protection of the laws” entitles a foreign corporation, after it has been admitted to the State and while abiding by the conditions of its admission, to as favorable treatment under the laws as is granted to a domestic corporation. “The inhibition . . . was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.”⁴² Therefore, it does not prevent the operation of the police power of the State, provided it is exercised without discrimina-

³⁹ Field, J., in *Pembina C. S. Mining & Milling Co. v. Pennsylvania*, 125 U. S. 181, 189, 31 L. ed. 650.

⁴⁰ *Phila. Fire Assoc. v. New York*, 119 U. S. 110, 30 L. ed. 342. *Acc. Manchester Fire Ins. Co. v. Herriott*, 91 Fed. 711.

⁴¹ *Blatchford, J., in Phila. Fire Assoc. v. New York*, 119 U. S. 110, 120, 30 L. ed. 342.

⁴² Field, J., in *Pembina C. S. Mining & Milling Co. v. Pennsylvania*, 125 U. S. 181, 188, 31 L. ed. 650.

tion, and extends equally to domestic and foreign corporations;⁴³ and a provision requiring a foreign corporation to accept service made upon an agent acting for it within the State is not unconstitutional.⁴⁴ But where a statute provides for one mode of service for residents and another for non-residents, it is unconstitutional as applied to foreign corporations;⁴⁵ so when it requires different formalities to be observed by agents of corporations organized under the laws of another State, not because of non-residence but because of such organization.⁴⁶ In like manner, a law imposing a tax on manufacturing corporations whose business is not wholly conducted within the State does not deny equal protection of the laws since it applies both to foreign and domestic corporations.⁴⁷ When, however, a foreign corporation holds a mortgage on land within the State which it has the right to foreclose, a denial of its right to purchase because it had not complied with State laws, would be a denial of equal protection of the law within the amendment.⁴⁸

§ 127. Taking property.

The Fourteenth Amendment declares that "no state shall deprive any person of life, liberty, or property, without due process of law." This clause prevents a State from passing any laws looking toward virtual confiscation of the property of foreign corporations within its limits. On this ground the Federal court in Iowa enjoined the railway commissioners of that State from putting in force the schedule of rates fixed by the legislature. Brewer, J., said that the State might

⁴³ *Pembina C. S. Mining & M. Co. v. Pennsylvania*, 125 U. S. 181, 31 L. ed. 650; *Minneapolis & S. L. Ry. v. Beckwith*, 129 U. S. 26, 32 L. ed. 585; *Manchester Fire Ins. Co. v. Herriott*, 91 Fed. 711.

⁴⁴ *Shafer Iron Co. v. Stone*, 88 Mich. 464, 50 N. W. 389.

⁴⁵ *Caldwell v. Armour*, 1 Pen. (Del.) 545, 43 Atl. 517.

⁴⁶ *State v. Cadigan*, 73 Vt. 245, 50 Atl. 1079, 87 A. S. R. 714, 57 L. R. A. 666.

⁴⁷ *New York v. Roberts*, 171 U. S. 658, 43 L. ed. 323.

⁴⁸ *Black v. Caldwell*, 83 Fed. 880.

limit rates; but under pretext of controlling rates, laws virtually amounting to confiscation of property could not be passed.⁴⁹ This principle would of course apply to a domestic as fully as to a foreign corporation.

§ 128. Interfering with interstate commerce.

To Congress has been given the power to regulate commerce with foreign nations and between the States. And this power is now conceded to be exclusive.⁵⁰ An act of Congress is not necessary. No State, therefore, has a right to impose any terms upon foreign corporations wishing to do business within its territory, if such imposition would be a regulation of foreign or interstate commerce.⁵¹ Before attempting to solve the perplexing question of what degree of control amounts to a regulation of commerce, it may be well to consider just what corporations are engaged in interstate or foreign commerce.

§ 129. Corporations engaged in interstate commerce: transportation.

The most obvious example of a corporation engaged in interstate commerce is a corporation actually engaged in the transportation of persons or merchandise from State to State;

⁴⁹ *Chicago & N. W. Ry. v. Dey*, 35 Fed. 866, 1 L. R. A. 744. "It is said that complainant is a foreign corporation, permitted simply as an act of grace to do business in this State, and that the legislature may therefore impose such terms and conditions, upon its doing business in the State, as it sees fit; that the carrier is not bound to continue in business, and, if he finds the rates imposed by the State not remunerative, may abandon the business. Whatever of force there may be in such arguments as applied to mere personal property capable of removal and use elsewhere, or in other business, it is wholly without force as against railroad corporations, so large a proportion of whose investment is in the soil and fixtures appertaining thereto, which cannot be removed."

⁵⁰ *Henderson v. Mayor of New York*, 92 U. S. 259, 23 L. ed. 543; *Gloucester Ferry Co. v. Pa.*, 114 U. S. 196, 29 L. ed. 158.

⁵¹ *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727, 28 L. ed. 1137; *Phila. Fire Assoc. v. New York*, 119 U. S. 110, 120, 30 L. ed. 342; *Central Stock Yards Co. v. Louisville & N. R. R. Co.*, 118 Fed. 113.

such as a railroad company,⁵² a ferry company,⁵³ a packet company,⁵⁴ or an express company.⁵⁵ The establishment by a railroad company of an office in a State into which its line does not run was held in the State courts not to be interstate commerce in that State.⁵⁶ But this was reversed in the Supreme Courts of the United States, and it is now well settled that the business of such an office is interstate commerce, and that the regulation of it is solely for Congress.⁵⁷ Not only is the transportation of tangible things commerce, equally so is the transmission of intelligence. Thus telegraph companies are engaged in interstate commerce, and a State cannot control them in such a way as would amount to a regulation of commerce. An exclusive charter given by a State to one telegraph company cannot prevent a foreign telegraph company from entering the State.⁵⁸ And in the same way anything used to facilitate transportation between States is an agency of interstate commerce. Thus a bridge company created to build a bridge between two States is engaged in interstate commerce, and in that function cannot be interfered with by either State.⁵⁹

§ 130. Trade.

When a corporation of one State, by its agents, sells goods in another State to be shipped from the first State, the corporation is engaged in interstate commerce. When this question first came before the Supreme Court of the United States, only two justices placed their decision on that ground.⁶⁰

⁵² *State Freight Tax*, 15 Wall. 232, 21 L. ed. 146.

⁵³ *Gloucester Ferry Co. v. Pa.*, 114 U. S. 196, 29 L. ed. 158.

⁵⁴ *New Orleans & M. Packet Co. v. James*, 32 Fed. 21.

⁵⁵ *Pacific Exp. Co. v. Seibert*, 142 U. S. 339, 35 L. ed. 1035.

⁵⁶ *Norfolk & W. R. R. v. Com.*, 114 Pa. 256, 6 Atl. 45.

⁵⁷ *Norfolk & W. R. R. v. Pa.*, 136 U. S. 114, 34 L. ed. 394; *acc. McCall v. Cal.*, 136 U. S. 104, 34 L. ed. 391.

⁵⁸ *Pensacola Tel. Co. v. W. U. Tel. Co.*, 96 U. S. 1, 24 L. ed. 708; *American U. Tel. Co. v. Western U. Tel. Co.*, 67 Ala. 26, 42 A. R. 90.

⁵⁹ *Stockton v. Baltimore & N. Y. R. R.*, 32 Fed. 9.

⁶⁰ *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727, 28 L. ed. 1137.

The State courts have almost universally held that such a transaction is interstate commerce,⁶¹ and the Supreme Court of the United States has recently so declared.⁶² Therefore, if an agent of a foreign corporation which has not complied with the law signs a contract which is not to be binding until approved at the home office, a statute of the State where the contract is signed which purports to make it invalid is void as a restraint on interstate commerce.⁶³

It would seem also that the transaction is one of interstate commerce where a foreign manufacturing company places its products in the hands of local merchants to be sold on commission.⁶⁴ And in Arkansas it has been held, by a divided court, that the establishment of an agency for the sale of sewing-machines manufactured in another State by a corporation of that State, is interstate commerce.⁶⁵ Loaning money by a foreign corporation is, however, not foreign commerce.⁶⁶

§ 131. Manufacture.

A corporation engaged in manufacturing is not engaged in commerce, though the article manufactured may be the subject of commerce. Accordingly, a State statute forbidding the manufacture is not unconstitutional, and the article may

⁶¹ *Ware v. Hamilton-Brown Shoe Co.*, 92 Ala. 145; *Cook v. Rome Brick Co.*, 98 Ala. 409; *Kindel v. B. & P. Lithographing Co.*, 19 Colo. 312, 35 Pac. 538, 24 L. R. A. 311; *Coit & Co. v. Sutton*, 102 Mich. 324, 60 N. W. 690, 25 L. R. A. 819; *People v. Roberts*, 50 N. Y. S. 355, 27 App. Div. 455; *People v. Roberts*, 51 N. Y. S. 866, 30 App. Div. 150; *People v. Barker*, 52 N. Y. S. 921, 31 App. Div. 263; *Bateman v. Western Star Milling Co.*, 1 Tex. Civ. App. 90, 20 S. W. 931; *Lasater v. Purcell Mill & Elev. Co.*, (Tex. Civ. App.) 54 S. W. 425; *Pasteur Vaccine Co. v. Burkey*, 22 Tex. Civ. App. 232, 54 S. W. 804. See *People v. Wemple*, 131 N. Y. 64, 29 N. E. 1002, 27 A. S. R. 542.

⁶² *Caldwell v. North Carolina*, 187 U. S. 622, 47 L. ed. 336.

⁶³ *Holder v. Aultman*, 169 U. S. 81, 42 L. ed. 669.

⁶⁴ *Allen v. Tyson-Jones Buggy Co.*, 91 Tex. 22, 40 S. W. 393; *Hallwood C. R. Co. v. Berry*, (Tex. Civ. App.) 80 S. W. 857.

⁶⁵ *Gunn v. White Sewing Machine Co.*, 57 Ark. 24, 20 S. W. 591, 38 A. S. R. 223, 18 L. R. A. 206.

⁶⁶ *Nelms v. Edinburg Amer. L. M. Co.*, 92 Ala. 157, 9 So. 141.

not be manufactured even with intent to export it.⁶⁷ But if instead of forbidding the manufacture wholly, the statute should only forbid it with intent to export the article, such legislation might perhaps be invalid. The Supreme Court of Indiana declared unconstitutional a statute forbidding the extracting of natural gas with intent to transport it beyond the limits of the State.⁶⁸

§ 132. Insurance.

No corporations have been subjected to more exacting statutory regulations than those engaged in the various forms of insurance. The conditions imposed upon these by statutes have often been very hard. Of course if this business were interstate commerce, such conditions would usually be invalid. Accordingly a very strenuous effort has been made to have insurance business included within the protection of the constitutional provision. It was urged that at the present time the insurance business is an indispensable adjunct of all commercial intercourse. But in *Paul v. Virginia* it was held that the business of effecting insurance is not commerce, and therefore that regulation of the business of foreign insurance companies is not unconstitutional.⁶⁹ This decision has been followed wherever the question has been raised.⁷⁰

Mr. Justice Field, in delivering the opinion of the court, said: "Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts of indemnity against loss by fire, entered into between the corporation and the assured, for a consideration paid by the latter. These contracts

⁶⁷ *Kidd v. Pearson*, 128 U. S. 1, 32 L. ed. 346.

⁶⁸ *State v. Ind. & Oh. Oil, Gas & Mining Co.*, 120 Ind. 575, 22 N. E. 778, 6 L. R. A. 579.

⁶⁹ 8 Wall. 168, 19 L. ed. 357.

⁷⁰ *Ducat v. Chicago*, 10 Wall. 410, 19 L. ed. 972; *Liverpool Ins. Co. v. Mass.*, 10 Wall. 566, 19 L. ed. 1029; *Doyle v. Continental Ins. Co.*, 94 U. S. 535, 24 L. ed. 148; *Phila. Fire Assoc. v. New York*, 119 U. S. 110, 30 L. ed. 342; *List v. Com.*, 118 Pa. 322. So of marine insurance: *Hooper v. Cal.*, 155 U. S. 648, 39 L. ed. 297; and life insurance: *New York L. Ins. Co. v. Cravens*, 178 U. S. 389, 44 L. ed. 1116.

are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another, and then put up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different States.”⁷¹

Consequently the agents of a foreign insurance company may be punished under the State ante-trust law;⁷² and under a retaliatory statute a foreign insurance company may be entirely excluded from the State.⁷³

§ 133. What is an unlawful interference.

If we have a corporation which is admittedly engaged in interstate or foreign commerce, it is a difficult question to determine what degree of control a State can exercise over it. The power of a State to make any conditions for foreign corporations in general is usually a deduction from the right to exclude absolutely. Since a State can do this, she can admit on any conditions she chooses. In the case of corporations engaged in interstate commerce, however, we must start from a different point. The State cannot exclude absolutely a corporation of this kind. Though a foreign telegraph company

⁷¹ In *Doyle v. Ins. Co.*, 94 U. S. 535, 24 L. ed. 148, Bradley, J. (dissenting), said, on the other hand: “To shut these institutions out of neighboring States would not only cripple their energies, but would deprive the people of those States of the benefits of their enterprise. The business of insurance, particularly, can only be carried on with entire safety by scattering the risks over large areas of territory, so as to secure the benefits of the most extended average. The needs of the country require that corporations—at least those of a commercial or financial character—should be able to transact business in different States.”

⁷² *State v. Phipps*, 50 Kan. 609, 31 Pac. 1097, 18 L. R. A. 657, 34 A. S. R. 152.

⁷³ *Talbott v. Fidelity &c. Co.*, 74 Md. 536, 22 Atl. 395, 13 L. R. A. 584.

could not claim the right of eminent domain, simply because it was engaged in interstate commerce, yet if it acquired a right of way by grant of individual owners the State could neither prevent it from coming in nor exclude it after it had entered.⁷⁴ But although the State cannot exclude such a corporation it is admitted that some control may be exercised. Even the least control must obviously to some extent affect interstate commerce; to be within the constitutional power of the State it must not go so far as to be a regulation of it.

Under the somewhat ambiguous term of police powers, regulations may be prescribed by the State for the good order, peace, and protection of the community. Thus laws providing for the examination of pilots have been supported; and of locomotive engineers who engaged in interstate commerce.⁷⁵ A statute of a State regulating the delivery of telegrams in a foreign State cannot be defended on that ground,⁷⁶ but a statute to prevent "ticket-scalping" has been upheld.⁷⁷ And a license tax on telegraph poles and wires has been sustained as a return for police supervision.⁷⁸ The application to a foreign corporation engaged in interstate commerce of a statute requiring a regular place of business and an officer upon whom process could be served has been held constitutional.⁷⁹ If the foreign corporation fails to observe any State regulation, it cannot be enjoined from doing business; some other penalty must be provided.⁸⁰

The limits of the police power are not yet well defined, nor is it possible without a most exhaustive discussion of the

⁷⁴ See *W. U. Tel. Co. v. Mass.*, 125 U. S. 530, 31 L. ed. 790.

⁷⁵ *Smith v. Alabama*, 124 U. S. 465, 31 L. ed. 508.

⁷⁶ *W. U. Tel. Co. v. Pendleton*, 122 U. S. 347, 30 L. ed. 1187.

⁷⁷ *Fry v. State*, 63 Ind. 552.

⁷⁸ *W. U. Tel. Co. v. New Hope*, 187 U. S. 419, 47 L. ed. 240; *Atl. & Pac. Tel. Co. v. Phila.*, 190 U. S. 385, 47 L. ed. 995.

⁷⁹ *Am. Union Tel. Co. v. W. U. Tel. Co.*, 67 Ala. 26, 42 A. R. 90; *Gunn v. White Sewing Machine Co.*, 57 Ark. 24, 20 S. W. 591, 38 A. S. R. 323, 18 L. R. A. 206. But see *contra*, *N. O. & M. Packet Co. v. James*, 32 Fed. 21.

⁸⁰ *W. U. Tel. Co. v. Mass.*, 125 U. S. 530, 31 L. ed. 790.

subject to lay down any but the most general principles. These were explained by Mr. Justice Bradley, as follows: "There are, undoubtedly, many things which in their nature are so deleterious or injurious to the lives and health of the people as to lose all benefit of protection as articles or things of commerce, or to be able to claim it only in a modified way. Such things are properly subject to the police power of the State.⁸¹ It is also within the undoubted province of the State legislature to make regulations with regard to the speed of railroad trains in the neighborhood of cities and towns; with regard to the precautions to be taken in the approach of such trains to bridges, tunnels, deep cuts, and sharp curves; and generally, with regard to all operations in which the lives and health of people may be endangered,—even though such regulations affect to some extent the operations of interstate commerce. Such regulations are eminently local in their character, and, in the absence of congressional regulations over the same subject, are free from all constitutional objections, and unquestionably valid."⁸²

How far the taxation of a foreign corporation may be a regulation of interstate commerce will be discussed in another chapter.

⁸¹ Citing *Brown v. Md.*, 12 Wheat. 419, 443, 6 L. ed. 678; *The License Cases*, 5 How. 504, 576, 12 L. ed. 256.

⁸² *Crutcher v. Kentucky*, 141 U. S. 47, 35 L. ed. 649. See *Waters-Pierce Oil Co. v. State*, 19 Tex. Civ. App. 1; 44 S. W. 936.

CHAPTER VII.

STATUTORY REGULATIONS OF FOREIGN CORPORATIONS.

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§ 141. Purposes and nature of statutory regulation.

Statutory regulations of the business of a foreign corporation are directed, generally speaking, to secure the rights of domestic creditors, stockholders, or others dealing with the corporation. The earliest need of regulation felt by the

States was some provision by which it might be possible for a creditor to bring suit against a corporation. This was accomplished by a provision requiring a foreign corporation to appoint an agent within the State authorized to accept service of process; and such a provision has been adopted in every State. For the protection of persons dealing with the corporation, publicity as to its business is often required. Special provisions are common for securing domestic creditors of insurance companies; those being the most important foreign corporations which (not being engaged in interstate commerce) the States are at liberty to regulate.

§ 142. Alabama.

It is provided in the Constitution that "no foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein; and without filing with the Secretary of State a certified copy of its articles of incorporation or association. Such corporation may be sued in any county where it does business by service of process upon an agent anywhere in this State."¹

Every corporation not organized under the laws of the State (except corporations organized under the laws of the United States²) shall before engaging in or transacting any business in the State, file a sealed instrument designating at least one known place of business in the State and an authorized agent or agents residing thereat; and when any such corporation shall abandon or change its place of business as designated in such instrument, or shall substitute another agent for the agent designated in such instrument of writing, such corporation shall file a new instrument before transacting any further business in the State.³ An insurance company files this instrument with the State Auditor; other cor-

¹ Ala. Const. § 232.

² Ala. Code, § 1324.

³ *Ibid.* § 1316.

porations with the Secretary of State.⁴ It is unlawful for any foreign corporation or any agent of such corporation to transact any business in the State before complying with these provisions. For each offense of the sort the corporation is to be fined one thousand dollars, and the agent five hundred dollars.⁵

“When a foreign corporation has filed an instrument in writing designating one or more agents in this State as provided by this Code, process issuing against such foreign corporation may be served upon any agent so designated; and the certificate of the Secretary of State or of the Auditor, as the case may be, showing such designation, is evidence of the fact of such agency. If the agent designated by such foreign corporation shall die, resign, remove from the State, or his authority shall cease from any cause, and no other agent shall be designated by said foreign corporation, the service of process issuing against it may be made upon the Secretary of State, or if the process be against an insurance company, upon the Auditor; and the officer serving such process upon the Secretary of State or the Auditor, as the case may be, must immediately transmit a copy thereof by mail to such corporation at its home office and state such fact in his return.”⁶

Railroad, mining, quarrying and manufacturing corporations organized under the laws of other States, which have complied with the State laws regulating the doing business in this State by foreign corporations, and which are actually doing business in this State, shall have the same right of eminent domain and the same remedies for the enforcement thereof as domestic corporations.⁷

“When an attachment is sued out in favor of a . . . foreign corporation, security for the costs of the suit may be taken and approved by the officer issuing the same, or may be indorsed

⁴ *Ibid.* § 1317.

⁵ *Ibid.* §§ 1318, 1319.

⁶ *Ibid.* § 3277.

⁷ Ala. 1900, Act 20.

with his approval on the attachment.”⁸ Process of attachment may issue against foreign corporations having property in this State.⁹

§ 143. Alaska.

All foreign corporations before doing business in the District shall file in the office of the Secretary of the District and in the office of clerk of the District Court for the division wherein they intend to carry on business, a duly authenticated copy of their charter, and the appointment of an agent to receive service of process,¹⁰ with the consent of the agent to act. It must also file a statement showing the name, and location of principal place of business without, and also (if it have one) within the district; amount of capital stock; amount thereof paid in, in money, and amount paid in in any other way, and manner thereof; amount of assets and of what they consist, and actual cash value thereof; liabilities, and if any of its indebtedness is secured, how and upon what property; and this statement must be renewed annually.

§ 144. Arizona.

“Any company incorporated under the laws of any other state, territory or foreign country which shall carry on any business, enterprise, or occupation, in this territory shall, before entering upon, doing, or transacting, such business, enterprise or occupation in this territory, file a certified and duly authenticated copy of its articles of incorporation or charter and the appointment of an agent as hereinafter specified, with the secretary of the territory and the county recorder in each county in this territory in which such business, enterprise or occupation is to be carried on” and shall publish a copy six times in a newspaper published in one of the counties, and file an affidavit of such publication.¹¹ “Any such foreign

⁸ Ala. Code, § 534.

⁹ *Ibid.* § 535.

¹⁰ Alaska Civ. Code, § 225.

¹¹ Ari. Civ. Code, § 909.

corporation shall in writing over the hand of its president or other chief officer attested by its secretary or a resolution of its board of directors appoint a resident agent in each county in this territory in which such corporation proposes to carry on any business enterprise or occupation. All such agents shall be actual and *bona fide* residents of the county for which they are appointed, and of the territory for at least three years, and the full name and residence of each shall be stated in the writing appointing them." ¹² "No corporation such as is mentioned . . . shall transact any business whatsoever in this territory until and unless it shall have first filed its articles of incorporation and appointment of an agent as required in the two preceding sections, and every act done by it prior to the filing thereof shall be utterly void." ¹³ "Should any agent so appointed absent himself from the county in which his appointment is filed for a period of three months consecutively, and no other agent be appointed for said corporation within four months after the commencement of such absence of such agent, the right to transact business by the corporation represented by such agent shall cease, and all acts or contracts performed or made thereafter shall, at the option of any person interested, be declared null and void." ¹⁴ "Upon complying with the provisions of this chapter, any association, company or corporation, organized or incorporated under the laws of any other state or territory, or any foreign country, shall be qualified and competent to take, receive and acquire, either by purchase or by operation of law, and possess, own, hold and dispose of any and all kinds of real and personal property within this territory, and to prosecute and defend and to appear, especially and generally, in any action in any court of or within this territory, and shall have, hold and enjoy, except as hereinafter provided, the same rights and privileges as are now held and enjoyed, or that may be hereafter held

¹² *Ibid.* § 910.

¹³ *Ibid.* § 911.

¹⁴ *Ibid.* § 912.

and enjoyed by any association, company or corporation organized or incorporated under the laws of this territory: *provided*, no association, company or corporation, organized or incorporated under the laws of any foreign country, shall take, receive, acquire, possess, hold or own, at any one time, more than 320 acres of real estate, exclusive of mines and mineral lands and land necessary or convenient for milling, smelting, reducing or working ores, or for manufacturing or commercial purposes.”¹⁵ In suits against a corporation summons may be served upon an officer or resident agent or by leaving a copy at the principal office of the company during office hours.¹⁶

It shall not be lawful for any insurance company not incorporated under the laws of this Territory to transact the business of insurance within the Territory unless the insurance company shall have first filed with the Secretary of the Territory its articles of incorporation and a statement under oath showing, First. The name and locality of the company; Second. The amount of capital stock; Third. The capital stock paid up; Fourth. The amount of its accumulation and assets and liabilities; Fifth. Surplus as to policy holders; and also filed with the county recorder in each county in which it transacts business a lawful appointment of a resident agent to receive service of process; and service on such agent shall be lawful service. When these provisions are complied with the Secretary shall issue to the company a certificate of authority to transact business in the territory.¹⁷ This statement must be renewed annually.¹⁸

§ 145. Arkansas.

The constitution provides that “Foreign corporations may be authorized to do business in this State under such limita-

¹⁵ *Ibid.* § 913.

¹⁶ *Ibid.* § 1323.

¹⁷ *Ibid.* §§ 810, 811, 812.

¹⁸ *Ibid.* § 813.

tions and restrictions as may be prescribed by law. *Provided*, that no such corporation shall do any business in this State except while it maintains therein one or more known places of business and an authorized agent or agents in the same upon whom process may be served; and, as to contracts made or business done in this State, they shall be subject to the same regulations, limitations and liabilities as like corporations of this State, and shall exercise no other or greater powers, privileges or franchises than may be exercised by like corporations of this State, nor shall they have power to condemn or appropriate private property.”¹⁹

“Every company or corporation incorporated under the laws of any other State, Territory or Country, now or hereafter doing business in this State, shall file in the office of the Secretary of State of this State a copy of its charter, or articles of incorporation, or association, or in case such company or corporation is incorporated merely by a certificate, then a copy of its certificate of incorporation, duly authenticated and certified by the proper authority. The Secretary of State shall cause all such charters, articles of incorporation, or association, so filed to be duly recorded in a book kept for that purpose. And such corporation shall be required to pay into the treasury of the State incorporating and other fees equal to those required of similar corporations formed within and under the laws of this State. Upon compliance with the above provisions by said corporation the Secretary of State shall cause to be issued to said corporation a copy of such charter, or articles of incorporation, or certificate so filed, properly certified under the seal of his office, and a copy of such charter or articles of incorporation or certificate, certified to by the Secretary of State shall be taken by all the courts of this State as evidence that the said corporation has complied with the provisions of this act, and is entitled to all the rights and benefits therein conferred. And such corporation shall be entitled to all the rights and privileges, and subject to all the

¹⁹ Ark. Const. Art. 12, § 11; Stat. § 1322.

penalties conferred and imposed by the laws of this State upon similar corporations formed and existing under the laws of this State." But this act, it is provided, shall not apply to railroad companies, which have heretofore built their lines of railroad through the State, or to "drummers" or travelling salesmen soliciting business in the State for foreign corporations which are entirely non-resident.²⁰

"Every corporation formed in any other State, Territory, Country, or County, before it shall be authorized or permitted to establish a business in this State, or to continue business therein, if already established, shall by its certificate, under the hand of the president and seal of such company or corporation, file in the office of the Secretary of this State, a copy of its articles of incorporation, if not already filed therein, and also with the clerk of the county in which it has opened an office for the purpose of transacting business, and in addition thereto shall file with the Secretary of State and the clerk of the county in which it has opened an office, or commenced business, within six months after the establishment of such office or the beginning of such business, a statement showing the proportional part of its capital stock which it has in use in the operation of its business, both in the State and in the county in which it is doing business."²¹

No foreign corporation "shall be authorized or entitled to make any contract in this State until it has complied with the provisions of the foregoing section, nor shall it be authorized to sue on any contract made in this State until the provisions of section one (1) of this act are complied with; *provided*, that corporations now doing business in this State may have sixty days to comply with this act. This act shall not apply to Railway, Express, Telegraph, Palace Car and Insurance Corporations."²² This section would seem to modify the meaning of the earlier provision, which was: "If any

²⁰ Ark. 1899, Act. 168.

²¹ Ark. 1901, Act 216, § 1.

²² *Ibid.* §§ 2, 3.

such foreign corporation shall fail to comply with the provisions of the foregoing section, all its contracts with citizens of this State shall be void as to the corporation, and no court of this State shall enforce the same in favor of the corporation." ²³

Before any foreign corporation shall begin to carry on business in this State, it shall, by its certificate under the hand of the president and seal of said company, filed in the office of the Secretary of State, designate an agent, who shall be a citizen of this State, upon whom service of summons, and other process may be made. Such certificate shall also state the principal place of business of such corporation in this State; and service upon such agent at any place in this State shall be sufficient service to give jurisdiction over such corporation to any of the courts of this State, whether the service was had upon such agent within the county where the suit is brought or is pending or not.²⁴

"Any foreign corporation, as defined above, which shall refuse or fail to comply with this act, shall be subject to a fine of not less than one thousand dollars (\$1,000), to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the prosecuting attorneys of the different judicial districts of this State to see to the proper enforcement of this act. All such fines so recovered shall be paid into the general revenue fund of the county in which the cause shall accrue. In addition to which penalty, or after the going into effect of this act, no foreign corporation, as above defined, which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this State, upon any demand, whether arising out of contract or tort." ²⁵

"In all cases where cause of action shall accrue to a resident or citizen of the State by reason of any contract with a foreign

²³ Ark. Stat. § 1324.

²⁴ Ark. 1899, Art. 19, § 1, amending Code, § 1323.

²⁵ Ark. 1899, Act 19, § 3.

corporation, or where any liability on the part of a foreign corporation shall accrue in favor of any citizen or resident of this State, whether in tort or otherwise, and such foreign corporation has not designated an agent in this State upon whom process may be served, or has not an officer continuously residing in this State upon whom summons and other process may be served so as to authorize a personal judgment, service of summons and other process may be had upon the Auditor of State, and such service shall be sufficient to give jurisdiction of the person to any court in this State having jurisdiction of the subject-matter, whether sitting in the township or county where the Auditor is served, or elsewhere in the State. This act shall not be effective in cases where its enforcement would conflict with the power of Congress or the Federal laws to regulate commerce between the States.”²⁶

§ 146. California.

It is provided in the Constitution that “no corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State.”²⁷

“Corporations organized under the laws of another State, Territory, or of a foreign country, which are now doing business in this State, or which shall hereafter enter this State to do business, or maintain an office in this State, shall file in the office of the Secretary of State of the State of California a certified copy of their articles of incorporation, or of their charters or of the statutes or legislative or executive or governmental act creating them in cases where they are created by charters or statutes or legislative or executive or governmental acts, and a certified copy thereof, duly certified by the Secretary of State of this State, in the office of the County

²⁶ Ark. 1901, Act 23, §§ 1, 2.

²⁷ Cal. Const. Art. 12, § 15.

Clerk of the county where its principal place of business is located and also where such corporation owns property.”²⁸ The penalty for failure to file the required document is a fine of not less than five hundred dollars; “in addition to which penalty, no foreign corporation as above defined which shall fail to comply with this Act, can maintain any suit or action, either legal or equitable, in any of the courts of this State upon any demand, whether arising out of contract or tort, until it has complied with this Act.”²⁹

Every foreign railway company may hereafter build railways, exercise the right of eminent domain, and do or transact any other business which such corporation might if it had been a corporation of California; having the same rights, privileges and immunities and subject to the same laws, penalties, obligations and burdens as if it had been organized under the laws of California.³⁰ Railroad corporations doing business in California, whether domestic or foreign, have power to enter into contracts with one another, whereby the one may lease of the other the whole or any part of its railroad, or may acquire of the other the right to use, in common with it, the whole or any part of its railroad.³¹

“Every foreign corporation doing business in the State shall designate some person residing in this State, upon whom process issued by authority by or under any law of this State, may be served, and within the time aforesaid, shall file such designation in the office of the Secretary of State, and a copy of such designation duly certified to by the Secretary of State shall be sufficient evidence of such appointment and of the due incorporation of such corporation, and it shall be lawful to serve on such person so designated, or in event that no such person is so designated, then on the Secretary of State, any process issued as aforesaid. Such service shall be made on

²⁸ Cal. 1901, ch. 93, § 1.

²⁹ *Ibid.* § 3.

³⁰ Cal. 1880, ch. 28, § 1.

³¹ *Ibid.* § 2.

such person so designated or the Secretary of State, in such manner as shall be prescribed in case of service required to be made on foreign corporations, and such service shall be deemed a valid service thereof on such corporation.”³² “Every corporation created by the laws of any other State or foreign country, which shall fail to comply with the provisions of section one of this Act shall be denied the benefit of the laws of this State limiting the time for the commencement of civil actions, and shall not maintain or defend any action or proceeding in any court of this State until such corporation shall have complied with the provisions of section one of this Act, and in any action or proceeding instituted against a body styled as a corporation and created by the laws of any other State or foreign country, evidence that such body has acted as a corporation or employed methods usually employed by corporations, shall be received by the court in such action or proceeding for the purpose of proving the existence of such corporation; the sufficiency of such evidence shall be determined by the court before whom such action or proceeding is pending with like effect as in other cases; *provided, nevertheless*, that any corporation which shall have complied with the requirements of section one of the Act of which this is amendatory, shall not be required to make or file any further designation of the person upon whom process may be served, but such former designation shall be deemed and taken to be a full compliance with the requirements of this Act; *provided further, however*, that if any such corporation shall withdraw such designation heretofore made, or if the person designated shall die, or remove from the State, then, and in that case, such corporation shall, within forty days after such withdrawal, make a new designation, or be subject to the provisions and penalties of this Act.”³³ “Every corporation created by the laws of any other State or foreign country which shall comply with the provisions of section one of this Act shall be

³² Cal. 1899, ch. 94, § 1.

³³ *Ibid.* § 2.

entitled to the benefit of the laws of this State limiting the time for the commencement of civil actions.”³⁴

A foreign surety company which has complied with the laws of the State regulating the admission of such companies to do business in the State may become surety on any bond required by law, on the same terms as domestic surety companies. The paid up capital must be not less than one hundred thousand dollars, and the company is subject to examination by the insurance commissioner.³⁵

When the plaintiff in an action or special proceeding is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant.³⁶

The officers and directors of foreign corporations which carry on business or keep an office for business within the State are guilty of misdemeanor for various frauds in the management of the corporation. These include making fraudulent subscription papers or other documents to induce persons to take stock; declaring unearned dividends; receiving for stock notes of individual stockholders, or stock or notes of other corporations as stockholders; receiving (except in payment of a debt) property of the corporation; falsifying the books or official reports of the corporation; refusing to exhibit books to a stockholder; contracting debts beyond the assets.³⁷ In the case of foreign corporations, these provisions are necessarily confined to acts committed within the State of California.

§ 147. Colorado.

The constitution provides that “no foreign corporation shall do any business within this State without having one or more known places of business and an authorized

³⁴ *Ibid.* § 3.

³⁵ Cal. Co. Civ. Pro. § 1056.

³⁶ *Ibid.* § 1036.

³⁷ Cal. Pen. Code, §§ 557-571.

agent or agents in the same, upon whom process may be served.”³⁸

“Every company incorporated under the laws of any foreign State or kingdom or of any State or Territory of the United States, beyond the limits of this State, and now or hereafter doing business within this State shall file in the office of the Secretary of State a copy of their charter of incorporation; or in case such company is incorporated by certificate under any general incorporation law, a copy of such certificate and of such general incorporation law duly certified and authenticated by the proper authority of such foreign State, Kingdom or Territory.”³⁹ A failure to comply with these provisions makes every officer, agent and stockholder concerned jointly and severally personally liable on all contracts of the corporation made within the State.⁴⁰ Copies of the charter so filed shall be received in the courts as sufficient proof of the corporate character of the corporation.⁴¹

“Foreign corporations shall, before they are authorized or permitted to do any business in this State, make and file a certificate, signed by the president and secretary of such corporation, duly acknowledged, with the Secretary of State, and in the office of the recorder of deeds of the county in which such business is carried on, designating the principal place where the business of such corporation shall be carried on in this State and an authorized agent or agents in this State residing at its principal place of business upon whom process may be served; and such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon such corporations of like character organized under the general laws of this State, and shall have no other or greater powers. And no foreign or domestic corporation, established or maintained in any way for pecuniary

³⁸ Col. Const. Art. 15, § 10.

³⁹ Colo. Stat. § 500.

⁴⁰ *Ibid.* § 501.

⁴¹ *Ibid.* § 502.

profit of its stockholders or members, shall purchase or hold real estate in this State except as provided for in this act, and no corporation doing business in this State, incorporated under the laws of any other State, shall be permitted to mortgage, pledge or otherwise encumber its real or personal property situated in this State, to the injury or exclusion of any citizen, citizens or corporations of this State, who are creditors of such foreign corporation, and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other State, shall take effect as against any citizen or corporation of this State, until all its liabilities due to any person or corporation in this State, at the time of recording such mortgage, have been paid and extinguished, Provided, however, That if any foreign corporation other than those expressly mentioned herein, intending or desiring to mortgage any or all of its property for any debt created or to be created in any other State, shall give notice of such intention or desire by publication for six successive weeks prior thereto, in some daily or weekly newspaper printed within the county wherein the property so intended or desired to be mortgaged is situated, or if there be no such newspaper, by posting such notices in five public places within such county, requesting all citizens and corporations of this State, having any claims or demands of any kind or nature whatsoever against the said foreign corporation, to file the same duly verified with the county clerk of the county in which such property so desired to be mortgaged is situated, on a date specified in such notice, which date shall be subsequent to the date of the last publication of such notice or in case of failure so to file such claim or demand, then and in such case a mortgage given by such foreign corporation to secure any debt created in any other State shall take effect as against any citizen or corporation of this State who shall fail to file his or its claim."⁴²

"No foreign corporation doing business in this State shall

⁴² *Ibid.* § 499.

be permitted to effect a reconstruction by liquidation or otherwise, nor shall any such reconstruction or liquidation take effect as against any citizen of this State, unless all the rights, shares and interests of any citizen of this State shall have been or shall be protected, and the stock interests of any citizen of this State in such corporation shall have been or shall be fully recognized, and in its original condition without diminution in number, amount or face value.”⁴³

Special provisions are made for the filing of charters and designation of agents by foreign benevolent and fraternal societies⁴⁴ and building and loan associations.⁴⁵ Foreign fire insurance companies authorized to do business in the State shall issue policies only through a regularly commissioned and licensed local agent; in order that the State may receive the taxes on local receipts.⁴⁶ And no risks shall be reinsured with companies not authorized to do business in the State.⁴⁷

Foreign railroad companies which have complied with the law of the State and have purchased or may purchase a line of railroad within the State constructed by another company, may extend the railroad, and for that purpose exercise the right of eminent domain like a domestic railroad.⁴⁸

Foreign like domestic corporations file annual reports showing, First—The names of its officers and their several places of residence, together with the street or business address of such officer. Second—The names of its directors or trustees and their several places of residence, together with the street or business address of such director or trustee. Third—The amount of its capital stock as fixed and determined by its articles of incorporation and amendments thereto. Fourth—The proportion of said capital stock actually paid in. Fifth—Setting forth how the same was paid, whether in cash, by the pur-

⁴³ *Ibid.* § 499 a.

⁴⁴ *Ibid.* §§ 2229 a to 2229 d.

⁴⁵ Colo. 1897, p. 129, §§ 15-18.

⁴⁶ Colo. 1899, p. 317, § 1.

⁴⁷ *Ibid.* § 2.

⁴⁸ Colo. 1901, ch. 53.

chase of property, or otherwise. Sixth—The amount of the indebtedness of said corporation at the date of filing said report. Seventh—Setting forth whether or not it is engaged in the active operation of its business within the State of Colorado. Eighth—Such other information as will show with reasonable fullness and certainty the condition of its real and personal property, and the financial condition of such corporation, joint stock company or association at the date of filing such report. Mining companies, railroads, telegraph, telephone, ditch, canal and power companies, make special reports. These reports are verified by oath and filed with the Secretary of State.⁴⁹

Any foreign life or accident insurance company that contests any claim for insurance and has judgment rendered against it shall be taxed with all costs, including an attorney's fee for the attorney for the successful party, such fees to be fixed by the court.⁵⁰ If the jury finds the defense frivolous and instituted for the purpose of delay, a penalty not exceeding twenty-five per cent. of the amount recovered shall be added to the judgment.⁵¹

"No foreign corporation doing business in this state shall be allowed a term of corporate existence of any longer period than domestic corporations of like character; and every such foreign corporation doing business in this State shall be required to file a renewal certificate of its corporate existence and pay the same fees therefor as if such corporation were a domestic corporation organized under the laws of this State. But in no case shall the time be extended beyond the corporate existence of such foreign corporation in the state or country where it was originally organized.⁵²

"Every foreign corporation doing business in this State and desirous of amending its articles of incorporation, shall

⁴⁹ Colo. 1901, ch. 52, § 11.

⁵⁰ Colo. 1901, ch. 54, § 1.

⁵¹ *Ibid.* § 2.

⁵² Colo. 1903, (Act of Apr. 9), § 3.

pay to the Secretary of State the same fee for filing such amended articles of incorporation as is now provided by law for the filing of amendments for domestic corporations.”⁵³

§ 148. Connecticut.

“Every foreign corporation, except insurance and surety companies and building and loan associations, shall, before transacting business in this state, file in the office of the secretary of the state a certified copy of its charter or certificate of incorporation, together with a statement, signed and sworn to by its president, treasurer, and a majority of its directors, showing the amount of its authorized capital stock and the amount thereof which has been paid in, and, if any part of such payment has been made otherwise than in cash, such statement shall set forth the particulars thereof.”⁵⁴ In case of an increase or reduction of capital stock a certificate thereof shall be filed with the Secretary of State.⁵⁵ The president and treasurer of every foreign corporation doing business in the State, not required by law to make other annual returns [*i. e.* banks, trust companies, insurance and surety companies, railroad or street railway companies, express companies, building and loan associations and investment companies] shall annually file with the Secretary of State a report stating the name and address of each officer and director, the amount of its outstanding capital stock which has not been paid for in full, with the amount due thereon, and the location of its principal office within the State. A certified copy is filed with the town clerk of the town in the State where the corporation has its principal office or place of business. Every corporation whose officers shall fail to comply with the requirements of this section shall forfeit to the State one hundred dollars for each failure.⁵⁶ All penalties and liabilities which are imposed

⁵³ *Ibid.* § 4.

⁵⁴ Conn. 1903, ch. 194, § 82.

⁵⁵ *Ibid.* § 86.

⁵⁶ *Ibid.* § 87.

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by the laws of this State upon officers, directors, and stockholders of domestic corporations for false and fraudulent statements and returns, shall apply to the officers, directors, and stockholders of foreign corporations doing business in this State.⁵⁷

"Any foreign corporation may purchase, hold, mortgage, lease, sell, and convey real and personal estate in this state for its lawful uses and purposes, and such real estate and other property as it may acquire, by way of foreclosure or otherwise, in payment of debts due such corporation; but no foreign corporation belonging to any of the classes excepted in section 62 of this act shall engage in or continue, in this state, the business authorized by its charter or the laws of the state under which it was organized, unless empowered so to do by some general or special law of this state, except for the purpose of carrying out and renewing existing contracts heretofore made."⁵⁸ The corporations excepted in section 62 are corporations transacting the business of a bank, savings bank, trust company, building and loan association, insurance company, surety or indemnity company, railroad or street railway company, telegraph or telephone company, gas, electric light, or water company, or requiring the right to take and condemn lands or to occupy the public highways of this state.

"Every foreign corporation with an office or place of business in this state, except insurance companies, surety companies, and building and loan associations, shall, before doing business in this state, appoint in writing the secretary of the state and his successors in office to be its attorney, upon whom all process in any action or proceeding against it may be served; and in such writing such corporation shall agree that any process against it which is served on such secretary shall be of the same legal force and validity as if served on the corporation, and that such appointment shall continue in force as long as any liability remains outstanding against the cor-

⁵⁷ *Ibid.* § 88.

⁵⁸ *Ibid.* § 81.

poration in this state. Such written appointment shall be acknowledged before some officer authorized to take acknowledgments of deeds and shall be filed in the office of said secretary, and copies certified by him shall be sufficient evidence of such appointment and agreement. Service upon said attorney shall be sufficient service upon the principal, and may be made by leaving a duly attested copy of the process with the secretary of the state or at his office.”⁵⁹ “When legal process against any corporation mentioned in [the preceding] section is served upon the secretary of the state, he shall immediately notify the corporation thereof by mail, and shall, within two days after such service, forward in the same manner a copy of the process served upon him to such corporation, or to any person designated by such corporation in writing. The plaintiff in the process so served shall pay said secretary at the time of such service a fee of twenty-five cents for each page of process, said fee in no case to be less than two dollars, which shall be recovered by him as part of his taxable costs if he shall prevail in the suit. Said secretary shall keep a record of all process served upon him, which shall show the day and hour when such service was made.”⁶⁰ “Every officer of a foreign corporation transacting business in this state which fails to comply with the requirements of [the two preceding sections], and every person who transacts business in this state as the agent of such delinquent corporation, shall be fined not more than one thousand dollars; but such failure shall not affect the validity of any contract by or with such corporation. The secretary of the state shall report such failure to the attorney-general, who shall thereupon institute proceedings against such corporation to restrain its further prosecution of business in this state.”⁶¹

In actions against foreign corporations, service of process may be made upon the president, secretary or any director

⁵⁹ *Ibid.* § 83.

⁶⁰ *Ibid.* § 84.

⁶¹ *Ibid.* § 85.

or managing or general agent of such corporation; provided that this act shall not apply to any foreign corporation which shall have an agent or attorney upon whom service of process may be made, duly appointed in conformity with the laws of this State.⁶²

§ 149. Delaware.

The Constitution provides that "no foreign corporation shall do any business in this State through or by branch offices, agents, or representatives located in this State, without having an authorized agent or agents in the State upon whom legal process may be served."⁶³

"It shall not be lawful for any corporation created by the laws of any other State, or the laws of the United States, to do any business in this State through or by branch offices, agents or representatives located in this State, until it shall have filed in the office of Secretary of State of this State a certified copy of its charter and the name or names of its authorized agent or agents in this State, together with a sworn statement of the assets and liabilities of such company or corporation, and paid to the Secretary of State, for the use of the State, Fifty dollars (\$50);⁶⁴ and the certificate of the Secretary of State under his seal of office, of the filing of such charter, shall be delivered to such agent or agents upon the payment to said Secretary of State of the usual fees for making certified copies; the said certificate shall be *prima facie* evidence of such company's right to do business in this State."⁶⁵ A certificate of the filing of this document is sent to the prothonotary of the Superior Court of each county, and by him recorded.⁶⁶

"All process sued out in this State in any court of this

⁶² Conn. 1895, p. 32.

⁶³ Del. Const. Art. 9, § 5.

⁶⁴ The provision as to the payment of fifty dollars does not apply to corporations which complied with the law as it stood before 1903.

⁶⁵ Del. For. Corp. Law (1903), § 1.

⁶⁶ *Ibid.* §§ 2, 3.

State against such corporation, all orders made by any court of this State, all rules and notices of any kind required to be served on or given to any such corporation, may, after the first day of May, A. D. 1903, be served on or given to such person or agent so certified as aforesaid, and such service or notice shall be as effectual and shall operate as if it had been served on or given to said corporation."⁶⁷ Another agent may be substituted by the corporation; and in case of the death or removal from the State another agent shall be substituted within ten days.⁶⁸ Any foreign corporation engaging in business without complying with the provisions of the act, and any agent of the corporation through whom such business is transacted, shall be guilty of a misdemeanor, and fined for each offence, the corporation from two to five hundred dollars, the agent from one to five hundred dollars.⁶⁹

"No foreign corporation as aforesaid shall, within the limits of this State, by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidence of debt, of receiving deposits, of buying gold or silver bullion or foreign coin, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt upon loan for circulation as money, anything in its charter or articles of incorporation to the contrary thereof notwithstanding."⁷⁰

§ 150. District of Columbia.

An attachment may be issued against the property of a foreign corporation.⁷¹ Foreign trust, loan and mortgage, safe-deposit, title insurance, and security companies are forbidden to carry on business in the District without compliance with the provisions for the government of similar domestic corporations; and the officers of an offending corporation are punished

⁶⁷ *Ibid.* § 4.

⁶⁸ *Ibid.* § 5.

⁶⁹ *Ibid.* § 6.

⁷⁰ *Ibid.* § 7.

⁷¹ Dist. Col. Code, § 445.

by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both.⁷² Foreign fraternal benefit associations file a copy of the charter, and an annual report of condition, with the superintendent of insurance,⁷³ and name the superintendent their attorney on whom legal process may be served.⁷⁴ No foreign insurance company is allowed to do business until it has deposited (either in some State or in the District) one hundred thousand dollars as a reserve fund; and it must publish an annual statement of the condition of its business in the United States and in the District.⁷⁵ Such a company shall file a copy of its charter with the superintendent of insurance, and if its principal office is located outside the District it shall appoint some suitable person resident in the District as its attorney, upon whom legal process may be served.⁷⁶

In actions against foreign corporations doing business in the District, all process may be served on the agent of such corporation, or person conducting its business, or, in case he is absent and cannot be found, by leaving a copy at the principal place of business in the District, and such service shall be effectual to bring the corporation before the court.⁷⁷

No corporation created in a foreign country, and no corporation over one-fifth of whose stock is held by aliens, may own land in the District, except such as is acquired by inheritance or in good faith in the collection of debts created before 1887.⁷⁸

§ 151. Florida.

Process may be served upon the president, vice-president, or other head of the corporation; or in his absence on the

⁷² *Ibid.* § 747.

⁷³ *Ibid.* §§ 751, 752.

⁷⁴ *Ibid.* § 753.

⁷⁵ *Ibid.* §§ 649, 650.

⁷⁶ *Ibid.* § 646.

⁷⁷ *Ibid.* § 790.

⁷⁸ U. S. 1887, ch. 340, §§ 1, 2.

cashier, treasurer, secretary, or general manager; in their absence on any director; in their absence, on any business agent resident in the county in which the action is brought. But if a foreign corporation shall have none of the foregoing officers or agents in the State, service may be made upon any agent transacting business for it in the State.⁷⁹ There seem to be no other statutory provisions for the regulation of ordinary foreign corporations.

"Any railroad or canal company already organized or hereafter to be organized under or by virtue of the laws of any other State or territory, desiring to extend or construct any part of the whole of its line or lines of railroad or canal in this State shall, upon filing in the office of the secretary of State a copy of its charter or charters, be entitled to all the powers and the privileges, and be subject to all the liabilities enjoyed by and imposed upon domestic companies of the same nature. Whenever a railroad company organized under and by virtue of the laws of another State becomes the owner of a line of road already completed in this State, said railroad company, upon filing in the office of the secretary of State a copy of its charter or reorganization, either before or after the passage of this act, shall be entitled to the said powers and privileges and subject to the said liabilities enjoyed by and imposed upon domestic companies of the same nature."⁸⁰

Foreign insurance companies are forbidden to do business in the State until they are authorized by the State Treasurer, under the direction of the board of insurance commissioners. A statement of condition must be filed, together with a written agreement under the seal of the company, signed by the president and secretary thereof, and agreeing on the part of the company that service of process in any civil action against such company may be made upon the agent of the company in this State, and authorizing such agent for and in behalf of such company to admit such service of process on him, and

⁷⁹ Fla. Rev. Stat. § 1019.

⁸⁰ *Ibid.* § 2251, amended 1897, ch. 4615.

agreeing that the service of process upon any agent shall be as valid and binding upon the company as if made upon the president or secretary.⁸¹ The corporation must be possessed of at least one hundred and fifty thousand dollars in bonds or stock, or in the case of life insurance companies one hundred thousand dollars invested in bonds or stock, or in mortgages on real estate worth twice the amount of the debt.⁸² The statement made by the company is annually renewed, and published;⁸³ and if the commission finds the assets of a company at any time insufficient, its permission to do business in the State will be revoked.⁸⁴ Similar provisions are made for foreign surety companies.⁸⁵

§ 152. Georgia.

"Corporations created by other States or foreign governments are recognized in our courts only by comity, and so long as the same comity is extended in their courts to corporations created by this State." ⁸⁶ "Where a foreign corporation does business in this State and relies upon provisions in its charter different from those imposed by the law of this State under similar circumstances, it must show that the opposite party had notice of such provisions at the time the contract was made." ⁸⁷ "No foreign corporation shall exercise within this State any corporate powers or privileges which by the Constitution or laws of Georgia are denied or prohibited to corporations created by this State, or the exercise of which is contrary to the public policy of this State, anything in the charter or corporate powers of the foreign corporation to the contrary notwithstanding." ⁸⁸ "Whenever any foreign

⁸¹ *Ibid.* § 2218.

⁸² *Ibid.* § 2219, amended 1895, ch. 4380.

⁸³ *Ibid.* §§ 2220, 2222.

⁸⁴ *Ibid.* § 2221.

⁸⁵ *Ibid.* §§ 2228-2233.

⁸⁶ Ga. Code, § 1846.

⁸⁷ *Ibid.* § 1850.

⁸⁸ *Ibid.* § 1847.

cashier, treasurer, secretary, or general manager; in their absence on any director; in their absence, on any business agent resident in the county in which the action is brought. But if a foreign corporation shall have none of the foregoing officers or agents in the State, service may be made upon any agent transacting business for it in the State.⁷⁹ There seem to be no other statutory provisions for the regulation of ordinary foreign corporations.

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⁷⁹ Fla. Rev. Stat. § 1019.

⁸⁰ *Ibid.* § 2251, amended 1897, ch. 4615.

agreeing that the service of process upon any agent shall be as valid and binding upon the company as if made upon the president or secretary.⁸¹ The corporation must be possessed of at least one hundred and fifty thousand dollars in bonds or stock, or in the case of life insurance companies one hundred thousand dollars invested in bonds or stock, or in mortgages on real estate worth twice the amount of the debt.⁸² The statement made by the company is annually renewed, and published;⁸³ and if the commission finds the assets of a company at any time insufficient, its permission to do business in the State will be revoked.⁸⁴ Similar provisions are made for foreign surety companies.⁸⁵

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⁸¹ *Ibid.* § 2218.

⁸² *Ibid.* § 2219, amended 1895, ch. 4380.

⁸³ *Ibid.* §§ 2220, 2222.

⁸⁴ *Ibid.* § 2221.

⁸⁵ *Ibid.* §§ 2228-2233.

⁸⁶ Ga. Code, § 1846.

⁸⁷ *Ibid.* § 1850.

⁸⁸ *Ibid.* § 1847.

corporation shall exercise or attempt to exercise within this State any corporate power or privilege denied or prohibited to corporations created by this State by the Constitution or laws of this State, or contrary to the public policy of this State, it shall be the duty of the courts to declare said corporate powers or privileges invalid and of no force or effect within this State, and to restrain or prohibit, by appropriate process, order or judgment, the exercise of said corporate powers or privileges by said foreign corporation, at the instance of any party at interest, or at the instance of the attorney-general, when the latter shall be directed by the Governor to proceed to that end in the name of the State.”⁸⁹

“Any foreign corporation or corporations incorporated by the laws of any other State, and claiming to own lands in Georgia in quantity amounting to as much as five thousand acres, shall be incorporated by the laws of Georgia within twelve months after February 28th, 1877; and on their failing to do so, the State of Georgia will not consent to the said corporation owning the said lands so located in her territory. And any foreign corporation incorporated by the laws of other States, who shall thereafter claim to own land in the State of Georgia in quantity amounting to five thousand acres or upwards, shall become incorporated by the laws of the State of Georgia, and in default thereof Georgia will not consent that said foreign corporation shall own said lands in her territory; and no foreign corporation incorporated by the laws of another State shall own more than five thousand acres of land except upon the condition of becoming a corporation under the laws of Georgia: *Provided*, that this section shall not apply to any foreign corporation, or any corporation incorporated by the laws of any other State, engaged in the business of lending money on real estate security, nor to any such corporation which holding a lien upon real estate to secure the payment of any debt, when said corporation, in order to prevent loss, is compelled to become the purchaser

⁸⁹ *Ibid.* § 1848.

of lands covered by deed or mortgage to secure a loan: *And provided, however,* that the benefits and privileges of the foregoing proviso shall not apply to any foreign corporation which does or may lend money in this State at a greater rate of interest than eight per cent. per annum. In estimating the amount of interest charged, there shall be included any and all commissions or fees which may be paid to said company or its duly authorized agents."⁹⁰

§ 153. Hawaii.

A foreign corporation desirous of doing business must file a certified copy of the charter and by-laws, the names of the officers, the name of some person on whom legal process may be served, and annually a report of condition.⁹¹ It shall then be subject to the same disabilities and have the same powers and privileges as a domestic corporation, and shall for the purpose for which it is constituted have full power to hold, take and convey by way of sale, mortgage or otherwise, any property in the Territory; provided the purposes of the corporation be not repugnant to any law of the Territory.⁹² Every corporation doing business in the Territory shall designate some person residing in the city or town where the principal place of business of the corporation in the Territory is, on whom process may be served; and process served on him is valid.⁹³ A corporation which fails to comply with this provision shall be denied the benefit of the laws of the Territory, and particularly of the statute of limitations.⁹⁴

§ 154. Idaho.

The Constitution provides that "no foreign corporation shall do any business in this State without having one or

⁹⁰ *Ibid.* § 1849.

⁹¹ Hawaii Civ. Laws, § 2076.

⁹² *Ibid.* § 2077.

⁹³ *Ibid.* § 2082.

⁹⁴ *Ibid.* § 2083.

more known places of business and an authorized agent or agents in the same, upon whom process may be served; and no company or corporation formed under the laws of any other country, State or Territory, shall have or be allowed to exercise or enjoy, within this State, any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this State.”⁹⁵

“Every corporation not created under the laws of this State must before doing business in this State, and every such corporation now doing business in this State must within three months after the taking effect of this act, file with the county recorder of the county in this State in which is designated its principal place of business in this State, a copy of the Articles of Incorporation of said corporation duly certified to by the Secretary of State of the State in which said corporation was organized, and a copy of such Articles of Incorporation duly certified by such county recorder, with the Secretary of State, paying to the latter the same fees as are provided by law to be paid for filing original articles of incorporation, and must within three months after the passage of this act or from the time of commencement to do business in this State, designate some person in the county in which the principal place of business of such corporation in the State is conducted upon whom process issued by authority of or under any law of this State, may be served, and within the time aforesaid must file such designation in the office of the Secretary of State, and in the office of the Clerk of District Court for such County, and a copy of such designation certified by either of said officers, must be evidence of such appointment; and it is lawful to serve on such persons so designated any process issued as aforesaid, and such service must be deemed a valid service thereof; such notice and designation of agent on whom process may be served shall run from the time of filing same as herein provided, until his successor is appointed by such filing, or said

⁹⁵ Ida. Const. Art. 11, § 10.

office becomes vacant by resignation filed by such agent in the office in which his appointment is filed, or by his death, or removal from such county, and in case of such vacancy said corporation shall within sixty days thereafter refill said office as herein provided. No contract or agreement made in the name of, or for the use or benefit of such corporation prior to the making of such filings as first herein provided can be sued upon or be enforced in any court of this State by such corporation, and such corporation cannot take or hold title to any realty within this State prior to making such filings, and any pretended deed or conveyance of real estate to such corporation prior to such filings shall be absolutely null and void; and any and all officers, agents and representatives, of said corporation, or persons claiming to be officers or agents of the same, who shall make or attempt to make any contract or agreement or contract any indebtedness in the name of such corporation or for its use and benefit, before such original filings are made, or while such corporation is in default upon filing a reappointment as hereby provided, shall be jointly and severally, personally liable upon and for all such contracts and agreements as principal contractors. Every such corporation which fails to comply with the provisions of this section shall be denied the benefit of the Statutes of the State limiting the time of the commencement of civil action and any limitations in such Statute shall only run in favor of any such corporation during such time as shall be within the State such person duly designated, as aforesaid, upon whom such service can be made. Provided, Further, That such foreign corporations complying with the provisions of this section shall have all the rights and privileges of like domestic corporations, including the right to exercise the right of eminent domain, and shall be subject to the laws of the State applicable to like domestic corporations.”⁹⁸

“When the person upon whom service is to be made . . . is a foreign corporation having no managing or business

⁹⁸ Ida. Civ. Code, § 2162.

agent, cashier or secretary within the State, and the fact appears by affidavit to the satisfaction of the court or a judge thereof, or a probate judge, and it also appears by such affidavit or by the verified complaint on file that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may make an order that the service be made by the publication of the summons." ⁹⁷ "When the plaintiff in an action . . . is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant." ⁹⁸

No foreign insurance company can do business unless it has a paid-up capital or assets of one hundred thousand dollars.⁹⁹ All agents soliciting insurance must procure a certificate of authority from the insurance commissioner.¹⁰⁰ No fire insurance risk shall be taken except through such agent.¹⁰¹ Every insurance company doing business in the State must file an annual report of condition.¹⁰² "Any insurance company not incorporated or organized under the laws of this state, desiring to transact business in this state, shall file with the insurance commissioner of this state a written instrument of power of attorney, duly signed and sealed, appointing and authorizing some person who shall be a resident of this state, to acknowledge or receive service of process, and upon whom process may be served for and in behalf of such company in all proceedings that may be instituted against such company in any court of this State, or any court of the United States in this State, and consenting that service of process upon any agent or attorney appointed to accept service under the provisions of this section shall be taken and held to be as valid as if served upon the company, and such instrument shall

⁹⁷ *Ida. Co. Civ. Pro.* § 3195.

⁹⁸ *Ibid.* § 3734.

⁹⁹ *Ida. Civ. Code*, § 2226.

¹⁰⁰ *Ibid.* § 2227.

¹⁰¹ *Ibid.* § 2228.

¹⁰² *Ibid.* §§ 2229, 2230.

further provide that the authority of such attorney shall continue until revocation of his appointment is made by such company by filing a similar instrument with the said insurance commissioner, whereby another person shall be appointed as such attorney."¹⁰³ The insurance commissioner examines into the soundness of every company doing business in the State; and all the books of the company shall be open to his inspection.¹⁰⁴ An annual statement of condition must be published.¹⁰⁵ Similar provisions are made for fraternal beneficiary associations¹⁰⁶ and surety companies.¹⁰⁷

§ 155. Illinois.

Every foreign corporation before transacting business in the State shall designate some person as its agent or representative in the State, upon whom service of legal process may be had; shall maintain a public office in the State for the transaction of its business, where proper books shall be kept; and shall be subjected to all liabilities, restrictions and duties, imposed upon domestic corporations of like character, and shall have no other or greater powers. No foreign corporation established for profit shall engage in any business not expressly authorized in its charter or the laws of its own State, nor shall it hold any real estate except such as may be necessary and proper for carrying on its legitimate business, nor shall it be permitted to mortgage, pledge or otherwise incumber its real or personal property situated in the State to the injury or exclusion of any individual or corporate domestic creditor. And no mortgage by any foreign corporation except railroad and telegraph companies given to secure any debt created in any other State, shall take effect as against any citizen or corporation of this State until all its liabilities due

¹⁰³ *Ibid.* § 2232.

¹⁰⁴ *Ibid.* § 2236.

¹⁰⁵ *Ibid.* § 2239.

¹⁰⁶ *Ibid.* §§ 2248, 2250.

¹⁰⁷ *Ibid.* §§ 2308-2313, 2324.

to any person or corporation in this State at the time of recording such mortgage have been paid and extinguished.¹⁰⁸

Every foreign corporation for profit files a certified copy of its charter or articles of incorporation with the Secretary of State, together with a sworn statement of the proportion of the capital stock of the corporation represented by its property located and business transacted in the State, and the name and address of the representative of the corporation in the State. Its charter fee is paid upon this proportion. On compliance with these provisions the Secretary of State issues his certificate, which shall be evidence in all the courts of the State that the corporation is entitled to all the rights and benefits of the act, and the corporation shall enjoy these rights and benefits for the time set forth in its charter unless this is greater than contemplated by the laws of the State, in which event the duration shall be the limit of time set out in the laws of the State. Such corporation must report promptly to the Secretary of State any change in the name of its representative, or any change in its capital stock or the proportion of it employed in the State. These provisions do not apply to railroad or telegraph companies already owning lines in the State, nor to insurance, banking, or loaning companies, nor do they release foreign surety companies from making deposits to secure creditors.¹⁰⁹ A fine of not less than one thousand dollars is provided for violation of these provisions; and no foreign corporation which has failed to comply with the act can maintain any suit or action, either legal or equitable, in any of the courts of this State, upon any demand, whether arising out of contract or tort.¹¹⁰

“Foreign corporations, and the officers and agents thereof, doing business in this State, shall be subjected to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character organized under the general

¹⁰⁸ Ill. 1899, p. 118, § 2.

¹⁰⁹ *Ibid.* § 3.

¹¹⁰ *Ibid.* § 4.

laws of this State, and shall have no other or greater powers. And no foreign or domestic corporation established or maintained in any way for the pecuniary profit of its stockholders or members, shall purchase or hold real estate in this State except as provided for in this act.”¹¹¹

Any corporation, subsisting by the laws of other States or countries, may constitute and empower, by letter of attorney, any person or persons to act as its agent in the State of Illinois, for the performance of such acts and doing such business as such corporation may be authorized to perform and do by the laws of the State of Illinois, and all instruments in writing, whether with or without seal, and all acts and things done or executed by such duly qualified agent, shall have the same force and effect, and be as valid and binding in law, as if executed and done in due form by law by the corporation for whom such agent may act; and any scrawl or seal written or affixed by such agent so duly empowered shall be deemed and considered, in such particular instance, as the corporate seal of the corporation for whom such agent is authorized as aforesaid to act; provided, that this act shall not apply to railroad corporations.¹¹²

Any foreign corporation may invest or loan money in the State, and recover it, or sell or foreclose a mortgage, or purchase at a judgment sale, like private persons, subject to a provision that all realty so purchased shall be offered at public auction once a year; but this permission is subject to the usury laws of the State.¹¹³

Every foreign corporation violating the anti-trust act is prohibited from doing any business in the State.¹¹⁴

Any foreign corporation in possession of a railroad or toll bridge in this State belonging to a domestic corporation, or owning all the capital stock of such corporation, may purchase

¹¹¹ Ill. Rev. Stat. ch. 32, § 26.

¹¹² *Ibid.* § 66.

¹¹³ *Ibid.* § 67.

¹¹⁴ Ill. 1893, p. 183, § 4.

of it the railroad or toll-bridge with all its franchises, etc., and thereafter may exercise the powers and franchises of the domestic corporation; and may exercise the power of eminent domain to acquire property for the extension or operation of such railroad as domestic corporations may. The purchase must be approved by a two-thirds vote of the stockholders of each corporation. The property and franchises thus acquired must be held subject to all the rights, powers, privileges, duties and obligations, prescribed by the laws of the State for the regulation of domestic railroads; and no railroad shall purchase any parallel or competing line of railroad in this State.¹¹⁵

§ 156. *Indiana.*

"Agents of corporations not incorporated or organized in this State, before entering upon the duties of their agency in this State, shall deposit in the Clerk's office of the county where they propose doing business therefor the power of attorney, commission, appointment, or other authority under or by virtue of which they act as agents.¹¹⁶ Said agents shall procure from such corporations, and file with the Clerk of the Circuit Court of the county where they propose doing business before commencing the duties thereof, a duly authenticated order, resolution, or other sufficient authority of the board of directors or managers of such corporations, authorizing citizens or residents of this State having a claim or demand against such corporation arising out of any transaction in this State with such agents, to sue for and maintain an action in respect to the same in any court of this State of competent jurisdiction, and further authorizing service of process in such action on such agent to be valid service on such corporation, and that such service shall authorize judgment and all other proceedings against such corporation.¹¹⁷ The service of process on

¹¹⁵ Ill. 1899, p. 116.

¹¹⁶ Ind. Rev. Stat. § 3453.

¹¹⁷ *Ibid.* § 3454.

such agents, in actions commenced against such corporation, shall be deemed a service on the corporation, and shall authorize the same proceedings as in other cases.¹¹⁸ Such foreign corporation shall not enforce, in any court of this State, any contracts made by their agents or by persons assuming to act as their agents, before a compliance by such agents or persons acting as such with the [foregoing] provisions.¹¹⁹

"Any person who shall, directly or indirectly, receive or transmit money or other valuable thing to or for the use of such corporations, or who shall in any manner make, or cause to be made, any contract, or transact any business for or on account of any such foreign corporation, shall be deemed an agent of such corporation, and be subject to the provisions of this Act relating to agents of foreign corporations.¹²⁰ The foregoing section shall not apply to persons acting as agents for foreign corporations for a special or temporary purpose or for purposes not within the ordinary business of such corporations, nor shall it apply to attorneys-at-law, as such.¹²¹ Any person acting as agent of a foreign corporation as aforesaid, neglecting or refusing to comply with the foregoing provisions as to agents, shall, upon presentment or indictment, be fined in any sum not less than fifty dollars.¹²²

"Every foreign corporation now doing or transacting, or that shall hereafter do or transact, any business in this State, or acquire any right, title, interest in, or lien upon real estate in this State, that shall transfer or cause to be transferred from any court of this State to any court of the United States, save by regular course of appeal, after trial in the State courts, any action commenced by or against such corporation in any court of this State by or against any citizen or resident thereof;

¹¹⁸ *Ibid.* § 3455.

¹¹⁹ *Ibid.* § 3456.

¹²⁰ *Ibid.* § 3457.

¹²¹ *Ibid.* § 3458.

¹²² *Ibid.* § 3459.

or that shall commence in any court of the United States in this State, or any contract made in this State or liability accrued therein, any suit or action against any citizen or resident of the State of Indiana,—shall thereby forfeit all right and authority to do or transact business in this State or hold real property or liens thereon; and all contracts between such corporations and citizens or residents of this State, made after the passage of this Act, shall be rendered void as in favor of such corporation, but enforceable by such citizen at his election. The provisions of this Act are hereby made conditions upon which such corporations may be authorized to do business in this State or hold titles to or liens on real estate therein.” ¹²³

“Every corporation for pecuniary profit formed in any other State, Territory or country, before it shall be authorized or permitted to transact business in this State, or to continue business therein, if already established, shall have and maintain a public office or place in this State for the transaction of its business, where proper books shall be kept to enable such corporation to comply with the constitutional and statutory provisions governing such corporations; and it shall designate an agent or representative in this State on whom service of process may be had; and such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers. And no foreign corporation established or maintained in any way for pecuniary profits of its stockholders or members shall engage in any business other than that expressly authorized in its charter, or the law of this State under which it may come, nor shall it hold any real estate except such as may be necessary and proper for carrying on its legitimate business. And no corporation incorporated under the laws of any other State, Territory or country, doing business in this State, shall be permitted to mortgage, pledge

¹²³ *Ibid.* §§ 3460, 3461.

or otherwise incumber its real or personal property situated in this State to the injury or exclusion of any citizen or corporation of this State who is a creditor of such foreign corporation. And no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other State, shall take effect as against any citizen or corporation of this State, until all its liabilities due to any person or corporation in this State at the time of recording such mortgage, has been paid and extinguished.¹²⁴ Every company incorporated for purposes of gain under the laws of any other State, Territory or country, now or hereafter doing business within this State, shall file in the office of Secretary of State, a certified copy of its articles of incorporation, or in case such a company is incorporated merely by a certificate, then a copy of its certificate of incorporation, duly certified and authenticated by the proper authority; and the principal officer or agent in Indiana of the said corporation shall make and forward to the Secretary of State, with the articles or certificates above provided for, a statement duly sworn to of the proportion of the capital stock of said corporation which is represented by its property located and business transacted in the State of Indiana; and such corporation shall be required to pay into the office of the Secretary of State of this State [the taxes and fees required by law]. Upon a compliance with the above provisions by said corporation, the Secretary of State shall give a certificate that said corporation has duly complied with the laws of this State and is authorized to do business therein, stating the amount of its entire capital and of the proportion thereof which is represented in Indiana. And such certificate shall be taken by all courts in this State as evidence that the said corporation is entitled to all the rights and benefits of this act, and such corporation shall enjoy those rights and benefits set forth in its original charter or articles of association, unless this shall be for a greater length of time than is contemplated by the laws of this State, in which

¹²⁴ *Ibid.* § 3461 a.

event the time and duration shall be reckoned from the creation of the corporation to the limit of time set out in the laws of this State: Provided, That nothing in this act shall be taken or construed into releasing foreign loan, building and loan, or bond investment companies, or other corporations, on the partial payment or installment plan, from any provisions of law requiring them to make a deposit of money with a proper officer of this State to protect from loss the citizens of this State who may do business with such loan, building and loan, or bond investment companies, or other corporations.¹²⁵ Every corporation for pecuniary profit formed in any other State, Territory or country, now doing business in, or which may hereafter do business in this State, which shall neglect or fail to comply with the conditions of this law, shall be subject to a fine of not less than \$1,000, to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the Secretary of State, immediately after September 1, 1901, and as often thereafter as he may be advised that corporations are doing business in contravention of this act, to report the fact to the Prosecuting Attorney of the county in which the business of such corporation is located, and the Prosecuting Attorney shall, as soon thereafter as is practicable, institute proceedings to recover the fine herein provided for, which shall go into the revenue funds of this State, in addition to which penalty on and after the going into effect of this act, no foreign corporation as above defined, which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this State, upon any demand, whether arising out of contract or tort: Provided, That the provisions of this act shall not apply to railroads or telegraph companies which have heretofore built or which are now in possession of their line or lines into or through this State.¹²⁶ This act does not apply to insurance companies, and is not to be taken or construed to change or

¹²⁵ *Ibid.* § 3461 b, 1903, ch. 127.

¹²⁶ *Ibid.* § 3461 c.

modify the laws which are directly applicable to that character of corporations, but apart from the insurance laws, all acts and parts of acts inconsistent with this act are hereby repealed." ¹²⁷

"Action may be brought against a corporation created by or under the laws of any other State, Government or country, in any court having jurisdiction of the amount demanded, by any person having a cause of action, in any county within the State, where any property, moneys, credits, or effects belonging or due to the corporation may be found." ¹²⁸ "The process against either a domestic or foreign corporation may be served on the president, presiding officer, chairman of the board of trustees, or other chief officer (or if its chief officer is not found in the county, then upon its cashier, treasurer, director, secretary, clerk, general or special agent), or if it is a municipal corporation, upon its mayor, marshal, or if it is an incorporated library company, upon its librarian. If none of the aforesaid officers can be found, then upon any person authorized to transact business in the name of such corporation, and if no such person, officer or agent be found in the county where suit is pending, process may be sent for service to any other county in the State where such person, officer or agent may be found. In case of a corporation operating a steamboat or steamboats, process against such corporation, if none of the aforementioned persons upon whom service can be made is found in the county in which said process is issued, then such process may be served upon any wharf master of any wharf boat in the State over and upon which said corporation receives or discharges freight or passengers: Provided, however, That process shall not be served upon any such person, officer or agent, when he is plaintiff in the suit; but in such cases process shall be served upon some other such person, officer or agent of the corporation than such plaintiff; and in case the defendant be a foreign corporation, having no such person, officer or agent, resident

¹²⁷ *Ibid.* § 3461 d.

¹²⁸ *Ibid.* § 315.

in the State, service may be made in the same manner as against other non-residents.' ¹²⁹

Particular classes of foreign corporations are subject to special regulations. Thus insurance companies, surety companies and investment companies, file certificates and annual statements, comply with requirements as to amount of capital, submit to examination by State officers, appoint agents to receive service of process, etc. ¹³⁰

§ 157. Iowa.

"Any corporation for pecuniary profit, other than for carrying on mercantile or manufacturing business, organized under the laws of another state, or of any territory of the United States, or of any foreign country, which has transacted business in the state of Iowa since the first day of September, 1886, or desires hereafter to transact business in this state, and which has not a permit to do such business, shall file with the secretary of state a certified copy of its articles of incorporation, duly attested, accompanied by a resolution of its board of directors or stockholders authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in this state; said application to contain a stipulation that such permit shall be subject to the provisions of this chapter. Before such permit is issued, the said corporation shall pay to the secretary of state the same fee required for the organization of corporations in this state, and if the capital of such corporation is increased, it shall pay the same fee as is in such event required of corporations organized under the law of this state. Any corporation transacting business in this state prior to the first day of September, 1886, shall be exempt from the payment of the fees required under the provisions of this section. The

¹²⁹ *Ibid.* § 318.

¹³⁰ *Ibid.* § 4915 *et seq.*; § 5015d *et seq.*; § 5480 *et seq.*

secretary of state shall thereupon issue to such corporation a permit, in such form as he may prescribe, for transaction of the business of such corporation and upon the receipt of such permit said corporation shall be permitted and authorized to conduct and carry on its business in this state. Nothing in this section shall be construed to prevent any foreign corporation from buying, selling and otherwise dealing in notes, bonds, mortgages and other securities.¹³¹ No foreign corporation which has not in good faith complied with the provisions of this chapter and taken out a permit shall possess the right to exercise the power of eminent domain, or exercise any of the rights and privileges conferred upon corporations, until it has so complied herewith and taken out such permit.¹³² Any foreign corporation that shall carry on its business in violation of the provisions of this chapter in the state of Iowa, by its officers, agents or otherwise, without having complied with this statute and taken out and having a valid permit, shall forfeit and pay to the state, for each and every day in which such business is transacted and carried on, the sum of one hundred dollars, to be recovered by suit in any court having jurisdiction; and any agent, officer or employé who shall knowingly act or transact such business for such corporation, when it has no valid permit as provided herein, shall be guilty of a misdemeanor, and for such offense shall be fined not to exceed one hundred dollars, or be imprisoned in the county jail not to exceed thirty days, or by both such fine and imprisonment, and pay all costs of prosecution. Nothing contained in this chapter shall relieve any person, company, corporation, association or partnership from the performance of any duty or obligation now enjoined upon or required of it, or from the payment of any penalty or liability created by the statutes heretofore in force, and all foreign corporations, and the officers and agents thereof doing business in this state shall be subject to all the liabilities, restrictions and duties that are

¹³¹ Ia. Code, § 1637

¹³² *Ibid.* § 1638.

or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers.¹³³

“Corporations organized in any foreign country, or corporations organized in this country the stock of which is owned in whole or in part by aliens or nonresidents, shall have the same rights, powers and privileges with regard to the purchase and ownership of real estate in this state as are granted to nonresident aliens in section twenty-eight hundred and ninety; chapter one, title fourteen, of this code.”¹³⁴

Foreign corporations may sue in the courts of the State in their corporate name.¹³⁵ They must give security for costs if requested by the defendant.¹³⁶ Suit may be brought against a foreign corporation and service by publication had when the corporation has in the State property, or debts owing it, sought to be taken by any of the provisional remedies or to be appropriated in any way;¹³⁷ and an attachment may be issued against the property of a foreign corporation.¹³⁸

§ 158. Kansas.

“Any corporation organized under the laws of another state, territory or foreign country and authorized to do business in this state shall be subject to the same provisions, judicial control, restrictions, and penalties, except as herein provided, as corporations organized under the laws of this state.”¹³⁹ Such a corporation files an annual statement with the Secretary of State, “showing the full corporate name of such corporation; the location of its principal office or place of business without this state; the location of its principal office or place of business within this state, if any it has; the

¹³³ *Ibid.* § 1639.

¹³⁴ *Ibid.* § 1641.

¹³⁵ *Ibid.* § 3469.

¹³⁶ *Ibid.* § 3487.

¹³⁷ *Ibid.* § 3534, cl. 5.

¹³⁸ *Ibid.* § 3878, cl. 1.

¹³⁹ Kan. Gen. Stat. of 1897, § 1267.

names and addresses of its officers and directors; the amount of its authorized capital stock and the amount of each share; the amount of its capital stock subscribed; and the amount and general nature of its resources and liabilities, in a form to be prescribed by the charter board."¹⁴⁰ "No action shall be maintained or recovery had in any of the courts of this state by any corporation doing business in this state without first obtaining the certificate of the secretary of state that statements provided for in this section have been properly made."¹⁴¹

"Foreign corporations shall have the right to receive, take, purchase, and hold, by mortgage or otherwise, any securities and liens executed, given or transferred or so intended to represent or secure loans upon or purchase-money of lands or other property situated or being in this state, and to sell, assign, transfer, and to sue upon, foreclose or otherwise enforce the same."¹⁴²

A foreign corporation before engaging in business files its irrevocable written consent that action may be brought against it in the proper court by service on the Secretary of State. Actions against foreign corporations may be brought in any county where the cause of action arose or in which the plaintiff may reside.¹⁴³ Except as it may have been modified by the above provisions, the rule for action against a foreign corporation is as follows: Any transitory action may be brought in any county in which there may be property of or debts owing to the corporation; or in the case of a foreign insurance company, in any county where the cause or some part thereof arose.¹⁴⁴ The summons may be served upon the managing agent in the State, if any;¹⁴⁵ or it may be served by publication if the corporation has property within the State.¹⁴⁶

¹⁴⁰ Kan. 1903, ch. 150, § 2.

¹⁴¹ Kan. Gen. Stat. § 1283.

¹⁴² Kan. 1903, ch. 153.

¹⁴³ Kan. 1898, ch. 10, §§ 3c, 3d; Gen. Stat. § 1261, 1262.

¹⁴⁴ Kan. Gen. Stat. ch. 95, § 48.

¹⁴⁵ *Ibid.* § 66.

¹⁴⁶ *Ibid.* § 72.

§ 159. Kentucky.

The constitution provides that "no corporation organized outside the limits of this State shall be allowed to transact business within the State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this Commonwealth."¹⁴⁷

A foreign corporation carrying on any business in the State (except insurance) "shall at all times have one or more known places of business in this State, and an authorized agent or agents thereat, upon whom process can be served; and it shall not be lawful for any corporation to carry on any business in this State, until it shall have filed in the office of the Secretary of State a statement, signed by its president or secretary, giving the location of its office or offices in this State, and the name or names of its agent or agents thereat upon whom process can be served; and when any change is made in the location of its office or offices, or in its agent or agents, it shall at once file with the Secretary of State a statement of such change; and the former agent shall remain agent for the purpose of service until statement of appointment of the new agent is filed; and if any corporation fails to comply with the requirements of this section, such corporation, and any agent or employé of such corporation, who shall transact, carry on or conduct any business in this State, for it, shall be severally guilty of a misdemeanor, and fined not less than one hundred nor more than one thousand dollars for each offense."¹⁴⁸

"If any foreign corporation shall, without the consent of the adverse party, remove to a Federal court any action pending against it in any court of this State, or institute an action against a citizen of this State in a Federal court of this State, such action on the part of the corporation shall forfeit its right to transact or carry on any business in this State; and such corporation, and any officer, agent or employé thereof, who shall thereafter transact or engage in any business or

¹⁴⁷ Ky. Const. § 202.

¹⁴⁸ Ky. Stat. § 571.

employment for such corporation in this State shall be severally guilty of a misdemeanor, and, upon indictment and conviction in the circuit court of any county in which such corporation, or any officer, agent or employé thereof transacts or engages in any business, be fined for each offense not less than five hundred nor more than one thousand dollars." ¹⁴⁹

"Every corporation organized under the laws of this State, and every corporation doing business in this State, shall, in a conspicuous place, on its principal place or places of business, in letters sufficiently large to be easily read, have painted or printed the corporate name of such corporation, and immediately under the same, in like manner, shall be printed or painted the word 'incorporated.' And immediately under the name of such corporation, upon all printed or advertising matter used by such corporation, except railroad companies, banks, trust companies, insurance companies and building and loan associations, shall appear in letters sufficiently large to be easily read, the word 'incorporated.' Any corporation which shall fail or refuse to comply with the provisions of this section shall be subject to a fine of not less than one hundred dollars and not more than five hundred dollars." ¹⁵⁰

A foreign insurance company is specially dealt with. It must furnish a copy of the charter to the commissioner, who upon being satisfied that the company has complied with the laws of the State shall furnish a license to transact business to its agents.¹⁵¹ In addition it must file with the commissioner a resolution adopted by its board of directors, consenting that service of process upon any agent of such company in this State, or upon the commissioner of insurance of this State, in any action brought or pending in this State, shall be a valid service upon said company; and if process is served upon the commissioner it shall be his duty to at once send it by mail, addressed to the company at its principal office; and if any

¹⁴⁹ *Ibid.* § 572.

¹⁵⁰ *Ibid.* § 576.

¹⁵¹ *Ibid.* § 634.

company shall, without the consent of the other party to any suit or proceeding brought by or against it in any court of this State, remove said suit or proceeding to any Federal court, or shall institute any suit or proceeding against any citizen of this State in any Federal court, it shall be the duty of the commissioner to forthwith revoke all authorities to such company and its agents to do business in this State, and to publish such revocation in some newspaper of general circulation published in the State.¹⁵² "Licenses to agents of foreign companies must be renewed annually in the same manner as original licenses, upon a finding by the commissioner that the company represented by the agent has fully complied with the law, and maintains its required capital or reserve; and whoever solicits and receives application for insurance on behalf of any insurance company, or transmits for any person other than himself an application for insurance, or a policy of insurance to or from such company, or advertises that he will receive or transmit the same, or who shall, in any manner, directly or indirectly, aid or assist in transacting the insurance business of any insurance company, shall be held to be an agent of such company within the meaning of this article, anything in the policy or application to the contrary notwithstanding; and any person acting as the agent of any company within the meaning of this section, without first procuring and having a license from the commissioner to act as such agent, or, after such license has expired, been suspended or revoked, or who shall procure any premium or obligation therefor by fraudulent representations, shall be deemed and held to be guilty of a misdemeanor, and upon conviction for such offense, shall be fined not less than fifty nor more than one hundred dollars for each offense."¹⁵³

"When by the laws of any other State any taxes, fines, penalties, deposits of money, or of securities or other obligations, prohibitions or requirements, are imposed upon insur-

¹⁵² *Ibid.* § 631.

¹⁵³ *Ibid.* § 633.

ance companies organized or incorporated under any general or special law of this State, and transacting business in such other State, or upon the agents of such insurance company, greater than those imposed upon similar companies by the laws of this State, or when such laws of other States shall require insurance companies of this Commonwealth to deposit money or security for the benefit or protection of citizens of such other States, or when the laws of any other State, or the officers thereof, shall prohibit companies of this Commonwealth from transacting business in said State without a special examination of said companies, or a computation of their liabilities by the officers of said State, the same taxes, fines, penalties, deposits, examinations, obligations and requirements shall be imposed upon all insurance companies doing business in this State, which are incorporated or organized under the laws of such State, and upon their agents." ¹⁵⁴

In the case of life insurance companies, a reserve of at least one hundred thousand dollars must be deposited with the chief financial officer of some State.¹⁵⁵ Companies for furnishing life or accident insurance upon the assessment plan file a special form of statement.¹⁵⁶ Other insurance companies must have one hundred and fifty thousand dollars of unimpaired capital or assets;¹⁵⁷ and any company whose capital is impaired to the extent of twenty per cent. must cease business. Foreign building and loan associations also file special statements and obtain a license.¹⁵⁸

Foreign railway companies are subject to the following provisions: "No company, association or corporation created by, or organized under, the laws or authority of any State or country other than this State, shall possess, control, maintain or operate any railway, or part thereof, in this State until, by

¹⁵⁴ *Ibid.* § 637.

¹⁵⁵ *Ibid.* § 657.

¹⁵⁶ *Ibid.* § 680.

¹⁵⁷ *Ibid.* § 693.

¹⁵⁸ *Ibid.* §§ 873, 875, 876.

incorporation under the laws of this State, the same shall have become a corporation, citizen and resident of this State. Any such company, association or corporation may, for the purpose of possessing, controlling, maintaining or operating a railway or part thereof in this State, become a corporation, citizen and resident of this State by being incorporated in the manner following, namely: By filing in the office of the Secretary of State, and in the office of the railroad commission, a copy of the charter or articles of incorporation of such company, association or corporation, authenticated by its seal and by the attestation of its president and secretary, and thereupon, and by virtue thereof, such company, association or corporation shall at once become and be a corporation, citizen and resident of this State. The Secretary of State shall issue to such corporation a certificate of such incorporation.¹⁵⁹

"Any company, association or corporation that, after the first day of August, one thousand eight hundred and ninety-three, possesses, controls, maintains or operates any railway, or part thereof, in this State, without becoming incorporated as a corporation, citizen and resident of this State, as permitted by section eight hundred and forty-one, shall be guilty of a misdemeanor, punishable by a fine of not less than one thousand dollars for each day, or part thereof, that any railway, or part thereof, in this State, is possessed, controlled, maintained or operated by it; any person that in anywise aids or assists, either as officer, agent, servant or employé in so possessing, controlling, maintaining or operating any railway, or part thereof, in this State, shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars for each day or part thereof that he so assists or aids."¹⁶⁰

Foreign corporations "formed for the purpose or engaged in the business of buying, gathering or accumulating information or news, of vending, supplying, distributing or publishing the same" must furnish the news to all applicants without

¹⁵⁹ *Ibid.* § 841.

¹⁶⁰ *Ibid.* § 842.

discrimination; refusal to do so forfeits their right to do business in the State, and subjects them to a penalty of one hundred to one thousand dollars.¹⁶¹

An attachment may issue against a foreign corporation on a debt or demand arising upon a contract, express or implied, or a judgment or award.¹⁶²

§ 160. Louisiana.

The constitution provides that "no domestic or foreign corporation shall do any business in this State without having one or more known places of business and an authorized agent or agents in the State upon whom process may be served."¹⁶³ It shall be the duty of all corporations domiciled out of the State, doing business in the State, excepting mercantile corporations, to file in the office of the Secretary of State a declaration of the place or locality of its domicile, together with the name of its agent or officer in the State representing said corporation upon whom service of process can be made.¹⁶⁴ "Whenever any such corporation shall do any business of any nature whatsoever in this state, without having complied with the requirements of [the preceding section], it may be sued upon any cause of action in the parish where the right or cause of action arose, and service of process may be made upon the person or persons, firm or company, acting or transacting such business for such corporation and each person or persons, company or firm, shall be deemed the agent of said corporation upon whom service can be made."¹⁶⁵

§ 161. Maine.

Foreign corporations may sue and be sued by their corporate name, and if they have property in the State it may be attached and appraised and set off on execution like the prop-

¹⁶¹ *Ibid.* § 883 a.

¹⁶² Ky. Civ. Code, § 194.

¹⁶³ La. Const. Art. 284.

¹⁶⁴ La. 1890, ch. 249, § 1.

¹⁶⁵ *Ibid.* § 2.

erty of non-resident aliens.¹⁶⁶ Service of process on a foreign corporation is sufficient if made by leaving an attested copy with the president, clerk, cashier, treasurer, agent, director or attorney of the corporation, or by leaving it at the office of or place of business of the corporation within the State.¹⁶⁷ Against foreign insurance companies on policies signed or countersigned by an agent within the State process may be served on the agent who signed, or any agent or attorney of the company or left at his last residence; and against a foreign express company in the same way.¹⁶⁸ Any foreign corporation doing business continuously in this State, and having constantly an officer or agent resident herein, on whom service of any process may be made, shall be entitled to the benefit of all provisions of law relating to limitation of actions, the same as domestic corporations.¹⁶⁹ Foreign banks are required to make special returns.¹⁷⁰

§ 162. Maryland.

Foreign corporations (except telephone, banking, insurance and railroad companies, electric light or construction companies, and oil or pipe line companies) shall before opening any office or transacting business in Maryland file in the office of the Secretary of State a certified copy of the charter, with a statement of condition, designating the place of its principal office or offices, the name and address of its resident agent or agents upon whom legal process may be served. This certificate is recorded, and a copy of it is legal evidence of corporate existence.¹⁷¹ The Secretary of State issues a certificate of right to do business,¹⁷² and any one who acts as agent for the corporation before this certificate is issued shall pay a fine of

¹⁶⁶ Me. Rev. Stat. ch. 47, § 76.

¹⁶⁷ *Ibid.* ch. 83, § 19.

¹⁶⁸ *Ibid.* ch. 83, § 22.

¹⁶⁹ *Ibid.* ch. 83, § 107.

¹⁷⁰ *Ibid.* ch. 8, § 60.

¹⁷¹ Md. 1898, ch. 270, § 1.

¹⁷² *Ibid.* § 2.

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one hundred dollars for each day he so acts.¹⁷³ No such foreign corporation shall be permitted to maintain any action, either at law or in equity, in the courts of the State until the certificate has been issued.¹⁷⁴

A foreign corporation may be made defendant in an attachment.¹⁷⁵

Any corporation not chartered by the laws of this State, which shall transact business therein, shall be deemed to hold and exercise franchises within this State, and shall be liable to suit in any of the courts of this State on any dealings or transactions therein.¹⁷⁶ Suits may be brought in any court of this State, or before a justice of the peace, against any corporation not incorporated under its laws, but deemed to hold and exercise franchises herein, or against any joint stock company or association doing business in this State, by a resident of this State, for any cause of action; and by a plaintiff not a resident of this State when the cause of action has arisen, or the subject of the action shall be situated, in this State; and process in such suits may be served as provided [in the case of domestic corporations] and also upon any agent of such corporation or joint stock company or association; and in case of service of process on an agent, notice shall be left at the principal office.¹⁷⁷ If such a corporation ceases to have a resident agent, and no officer can be found in the State, process served on the last agent shall be sufficient, if a copy is also served on the president or managers or two directors, wherever they may be found.¹⁷⁸

§ 163. Massachusetts.

No foreign corporation (except life insurance companies) shall engage or continue in any kind of business in this com-

¹⁷³ *Ibid.* § 1.

¹⁷⁴ *Ibid.* § 4.

¹⁷⁵ Md. Gen. L. Art. 9, § 2.

¹⁷⁶ Md. Gen. L. Art. 23, § 295.

¹⁷⁷ *Ibid.* § 297.

¹⁷⁸ *I id.* § 298.

monwealth the transaction of which by domestic corporations is not permitted by the laws of this commonwealth.¹⁷⁹

"Every foreign corporation, except foreign insurance corporations, which has a usual place of business in this commonwealth, or which is engaged in this commonwealth, permanently or temporarily, and with or without a usual place of business therein, in the construction, erection, alteration or repair of a building, bridge, railroad, railway or structure of any kind, shall, before doing business in this commonwealth, in writing appoint the commissioner of corporations and his successor in office to be its true and lawful attorney upon whom all lawful processes in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on the corporation, and that the authority shall continue in force so long as any liability remains outstanding against the corporation in this commonwealth. Every foreign insurance corporation shall in like manner and with like effect appoint the insurance commissioner or his successor in office to be its attorney. The power of attorney and a copy of the vote authorizing its execution, duly certified and authenticated, shall be filed in the office of the commissioner who has been appointed, and copies certified by him shall be sufficient evidence thereof. Service of such process shall be made by leaving a copy of the process with a fee of two dollars in the hands or in the office of the commissioner, and such service shall be sufficient service upon the principal."¹⁸⁰

Before engaging in business every foreign corporation (except insurance companies, which are specially provided for) shall file with the Secretary of State a copy of its charter or articles, together with a sworn statement of the amount of its capital stock, of the amount paid in thereon to its treasurer and, if any part of such payment has been made otherwise than in

¹⁷⁹ Mass. Rev. L. ch. 126, § 2; 1903, ch. 437, § 57.

¹⁸⁰ Mass. Rev. L. ch. 126, § 4; 1903, ch. 437, § 58.

money, of the details of such payment; and in the case of business corporations also the name of the corporation, the location of its principal office, the names and addresses of its officers, the date of its annual meeting for the election of officers, and a copy of its by-laws. The officers of such corporation who fail to comply with this requirement are liable to a fine of not more than five hundred dollars; but such failure shall not affect the validity of any contract by or with such corporation. For false and fraudulent statements the officers are liable to creditors, as are those of domestic corporations.¹⁸¹ Notice of increase or decrease of capital stock must be filed within thirty days.¹⁸² An annual certificate of condition shall be filed, approved by the commissioner of corporations.¹⁸³ For failure to file this certificate the corporation shall forfeit to the commonwealth not less than five nor more than ten dollars for each day for fifteen days after the expiration of the period [for filing], and not less than ten nor more than two hundred dollars for each day thereafter, during which such omission continues.¹⁸⁴

"A foreign corporation which carries on a banking, mortgage, loan and investment or trust business shall indicate in letters equally conspicuous with its name, upon all signs, advertisements, circulars, letterheads and other documents which contain its name, the state or country in which it is chartered or incorporated. No such corporation and no person who is engaged in such business shall carry it on in or under a name which, previous to such use, was in lawful use by a corporation which was established under the laws of this commonwealth and was carrying on the same or a similar business or in or under a name so similar thereto as to be liable to be mistaken for it." ¹⁸⁵

¹⁸¹ Mass. Rev. L. ch. 126, § 7; 1903, ch. 437, § 60.

¹⁸² Mass. Rev. L. ch. 126, § 12; 1903, ch. 437, § 65.

¹⁸³ Mass. Rev. L. ch. 126, §§ 13, 14; 1903, ch. 437, §§ 66, 67.

¹⁸⁴ Mass. Rev. L. ch. 126, § 15; 1903, ch. 437, § 68.

¹⁸⁵ Mass. Rev. L. ch. 126, § 8.

Foreign business and manufacturing corporations which have complied with the provisions of the law may purchase and hold such real estate in this commonwealth as may be necessary for conducting their business.¹⁸⁶

"If a foreign corporation which owns or controls a majority of the capital stock of a domestic street railway, gas light or electric light corporation issues stock, bonds or other evidences of indebtedness based upon or secured by the property, franchise or stock of such domestic corporation, unless such issue is authorized by the law of this commonwealth, the supreme judicial court shall have jurisdiction in equity in its discretion to dissolve such domestic corporation. If it appears to the attorney general that such issue has been made, he shall institute proceedings for such dissolution and for the proper disposition of the assets of such corporation. The provisions of this section shall not affect the right of foreign corporations, their officers or agents to issue stock and bonds in fulfillment of contracts existing on the fourteenth day of July in the year eighteen hundred and ninety-four."¹⁸⁷

"Foreign corporations engaged in the business of selling or negotiating bonds, mortgages, notes or other choses in action shall be subject to all the general laws relating to foreign corporations which have a usual place of business in this commonwealth, and they shall make an annual return to the commissioner of corporations of their assets and liabilities, and shall make such further statements to him at such times and in such form as he may require."¹⁸⁸

"Foreign corporations which have property in this commonwealth shall be liable to be sued and to have their property attached in the same manner and to the same extent as natural persons who are residents of other states and who have property in this commonwealth."¹⁸⁹

¹⁸⁶ *Ibid.* § 10; Mass. 1903, ch. 437, § 63.

¹⁸⁷ Mass. Rev. L. ch. 126, § 11; 1903, ch. 437, § 64.

¹⁸⁸ Mass. Rev. L. ch. 126, § 3; see 1903, ch. 463.

¹⁸⁹ Mass. Rev. L. ch. 126, § 9; 1903, ch. 437, § 62.

§ 164. Michigan.

"It shall be unlawful for any corporation organized under the laws of any State of the United States (except the State of Michigan), or of any foreign country to carry on its business in this State, unless it shall first have filed and recorded, in the office of the Secretary of State, a certified copy of its charter, or articles of incorporation, and have filed evidence of appointment of an agent in this State to accept service of process and have paid to the Secretary of State the requisite filing and recording fees and franchise fees." In order to determine the amount of fees, the corporation also files with the Secretary of State a sworn statement of condition including the amount of business transacted and the proportion of capital invested within the State.¹⁹⁰ A corporation carrying on business in Michigan before paying its franchise fee shall at once become indebted for the amount of the fee.¹⁹¹

"No such corporation having appointed an agent in Michigan to accept service of process shall have power to revoke or annul such appointment unless it shall, before such revocation shall be filed, or take effect, file notice of the appointment of some other person in this State as such agent; and in case of the death or removal from the State of any agent so appointed, without the appointment of any other person to act as such agent, such service of process may be made upon the Secretary of State, who shall immediately notify the corporation thus served by mailing such notice to its address.¹⁹² No such foreign corporation shall be permitted to transact business in this State unless it be incorporated in whole, or in part, for a purpose or object for which a corporation may be formed under the laws of Michigan, and then only for such purpose or object.¹⁹³ Any foreign corporation so admitted to carry on business in this State shall be subject to any and all provi-

¹⁹⁰ Mich. 1901, Act 206, § 1.

¹⁹¹ *Ibid.* § 2.

¹⁹² *Ibid.* § 3.

¹⁹³ *Ibid.* § 4.

sions of statute requiring the filing of reports by corporations of this State organized for a purpose for which such foreign corporation shall have been admitted; and a failure to file such report within the time prescribed shall be sufficient cause for revoking the right of such corporation to carry on business in this State, which revocation may be declared by any court of competent jurisdiction on complaint filed by the Attorney General.¹⁹⁴ The provisions of this act shall not be applicable to such foreign corporations as are permitted to do business in this State by license issued by the Commissioner of Insurance, or by the State Treasurer according to the provisions of law, nor shall this act be construed to prohibit any sale of goods or merchandise which would be protected by the rights of interstate commerce.”¹⁹⁵

Actions of tort against foreign corporations may be begun by writ of attachment where the cause of action arose in the State or while the plaintiff was a *bona fide* resident of the State.¹⁹⁶ And a foreign corporation may be sued as garnishee.¹⁹⁷ A foreign corporation may sue upon giving security for costs;¹⁹⁸ but it cannot maintain any action founded upon, or on a liability arising out of, any act forbidden by law.¹⁹⁹

§ 165. Minnesota.

Every foreign corporation for profit before doing business in the State or acquiring, holding or disposing of property within the State, or maintaining any action in any State court shall have a public office in the State and appoint an agent, who shall reside in the county in which the office is located, duly authorized to accept service of process in any action; and service upon such agent shall be held personal service on the

¹⁹⁴ *Ibid.* § 5.

¹⁹⁵ *Ibid.* § 6.

¹⁹⁶ Mich. Stat. § 8025a.

¹⁹⁷ Mich. 1899, Act 257.

¹⁹⁸ Mich. Stat. § 8135.

¹⁹⁹ *Ibid.* § 8136.

corporation.²⁰⁰ A duly-authenticated copy of the appointment of such agent shall be filed in the office of Secretary of State, and a certified copy thereof shall be *prima facie* evidence of the appointment and authority of the agent.²⁰¹ The corporation shall also file with the Secretary of State a copy of its charter or articles of incorporation, and a statement of condition, showing the proportion of its capital invested in the State; the charter fee being based upon this proportionate amount. The Secretary of State shall then issue his certificate which shall be *prima facie* evidence of its corporate right; and the corporation shall enjoy these rights for thirty years, unless its existence shall sooner terminate. The thirty-year term may be renewed in the same way.²⁰² The penalty for failure to comply with this act is one thousand dollars; and no corporation which shall fail to comply can maintain any suit or action either legal or equitable in any of the courts of this State upon any demand, whether arising out of contract or tort. The provisions of the act shall not apply to corporations engaged in an exclusively manufacturing business in the State, nor to drummers or traveling salesmen soliciting business in the State for corporations which are entirely non-residents; nor to any corporation engaged only in the business of loaning money or investing in securities in this State, including all business incidentally growing out of the same and the handling of such real estate and other property as may be taken by foreclosure or otherwise in liquidation of such loans or securities . . . or the transportation of freight and passengers by water.²⁰³

The transfer agent in the State of any foreign or domestic corporation shall exhibit at any time during business hours the stock transfer book and list of stockholders to any stockholder who asks for it.²⁰⁴

²⁰⁰ Minn. 1899, ch. 69, § 1.

²⁰¹ *Ibid.* § 2.

²⁰² *Ibid.* § 3; 1899, ch. 70.

²⁰³ *Ibid.* § 4.

²⁰⁴ Minn. 1897, ch. 165, § 1.

Any foreign corporation which now is or hereafter may be created in whole or in part for the buying and selling of or dealing in lands in this State, or in the promotion of immigration to or the settlement or occupation of any lands in this State, may loan its funds to persons, whether its members or not, and take and enforce securities therefor, and may acquire, take, hold, convey, use, or occupy real, personal, or mixed property of every name and nature, within this State, and make contracts and transact all lawful business consistent with the objects and purposes of said corporation, and said corporation shall in all respects be subject to the laws of this State, and in all suits or proceedings by or against said corporation it shall be deemed for all purposes a domestic corporation.

Provided, that no such corporation shall acquire or hold at any one time more than one hundred thousand acres of land in this State, and that all lands acquired by it shall be sold within twenty-one years after their acquisition, except such lands as may be acquired by it under mortgage foreclosure or forfeiture of contracts for the sale thereof, which shall be disposed of by it within fifteen years after such acquisition or forfeiture.

And provided further, said corporation shall appoint an agent or attorney residing within this State, upon whom all process may be served, which appointment shall be filed in the office of the Secretary of State.²⁰⁵

Elaborate provisions are made to prevent a foreign corporation from bringing suit in the Federal court, or removing proceedings from the State to the Federal courts. "No foreign corporation now or hereafter doing business in this State shall have, possess or exercise any rights, privileges or immunities not possessed by domestic corporations; but unless otherwise provided by law shall in all respects be deemed, if it shall remain in this State for sixty days after the passing of this act, to be a domestic corporation, and entitled to all

²⁰⁵ Minn. Gen. Stat. § 342).

the rights, privileges and immunities of domestic corporations, subject to all laws of this State." ²⁰⁶

Where, by the general or special laws of this State relating or in any way appertaining to any foreign corporation, it is provided in substance or effect that in suits and proceedings upon causes of action arising in this State, in which such corporation shall be a party, such corporation shall be deemed to be a domestic corporation, it is provided that if such corporation makes application to remove such proceedings to a Federal court it shall be liable to a fine of from one hundred to one thousand dollars, ²⁰⁷ shall forfeit the right to do business in the State, and for each day's business thereafter done in the State be liable to a penalty of from one to ten thousand dollars. ²⁰⁸ In case of an insurance company, its license to do business in the State shall be revoked by the insurance commissioner, and it shall be liable to the penalty. ²⁰⁹ All privileges and immunities are forfeited by a foreign corporation which violates the act, and any contract made by it thereafter is void, provided that such a contract may be enforced in favor of any person who entered into it in good faith without notice. If any railway company removes suit it shall be unlawful for it to run any locomotive or cars in the State, and it shall be liable for all damages done by it in the performance of said unlawful act to any person or property. ²¹⁰ Even a foreign corporation not doing business in the State is forbidden under the same penalty to sue in or remove to the Federal court any cause of action arising in this State. ²¹¹ The last provision, so far as it purports to apply to acts done outside the State, is certainly void; since the penal laws of a State cannot apply to persons and acts outside its jurisdiction. The provision as to railroad companies is probably valid, since

²⁰⁶ *Ibid.* § 3425.

²⁰⁷ *Ibid.* § 3421.

²⁰⁸ *Ibid.* § 3422.

²⁰⁹ *Ibid.* §§ 3423, 3424.

²¹⁰ *Ibid.* § 3427.

²¹¹ *Ibid.* § 3426.

it merely creates a personal right by reason of acts done within the State. The rest of the legislation is probably unconstitutional.²¹²

Process against a foreign corporation shall be served upon the designated agent, or if there is none then upon any officer.²¹³ Service may be made by publication upon a foreign corporation which has property within the State.²¹⁴ A foreign corporation owning land in the State must appoint an agent on whom service of process in any action concerning the land may be made.²¹⁵ A foreign corporation may sue, like a domestic corporation;²¹⁶ but it cannot maintain an action upon an obligation or liability arising out of any act contrary to the law or policy of the State, or which is thereby forbidden to similar domestic corporations.²¹⁷

§ 166. Mississippi.

Every foreign corporation doing business in the State except an insurance company "shall file in the office of the Secretary of State a copy of its charter or articles of incorporation, or in case such company or corporation is incorporated merely by a certificate, then a copy of such certificate, duly certified and authenticated. Said charters, articles of incorporation or certificates so to be filed, shall be duly certified by the President, Secretary or Secretaries or other chief executive of such corporation and by attaching thereto the corporate seal, and the Secretary of State upon the payment of fees provided in this Act shall give a certificate that said corporation has filed a copy of its charter or articles of incorporation as required by this Act, and any foreign corporation which shall not file a copy of its charter or certificate or articles of incorporation as provided in this Act within ninety days after its passage

²¹² *Infra*, § 122.

²¹³ Minn. Gen. Stat. § 5200.

²¹⁴ *Ibid.* § 5204.

²¹⁵ *Ibid.* § 5816.

²¹⁶ *Ibid.* § 5890.

²¹⁷ *Ibid.* § 5891.

shall be liable to a fine of not less than one hundred dollars." ²¹⁸

The acts of the agents of any foreign corporation shall have the same force and validity as the acts of agents of private persons, but such foreign corporation shall not do or commit any act in this State contrary to the laws or policy thereof, and shall not be allowed to recover on any contract made in violation of law or public policy. ²¹⁹

It is provided by the Constitution that no foreign corporation shall build, operate or lease any railroad in the State, but if any railroad is to be built and operated partly in another State and partly in Mississippi the owners shall first become incorporated in this State. Consolidation is forbidden unless the consolidated corporation shall become a domestic corporation. ²²⁰

Foreign corporations may sue by their corporate names, and are liable to be sued by attachment or otherwise like individual non-resident debtors. ²²¹

Corporations which exist by the laws of any other State of the Union, by the Acts of Congress, or the laws of any foreign country, may sue in this State by their corporate names, and they shall also be liable to be sued or proceeded against by attachment or otherwise, as individual non-resident debtors may be sued or proceeded against. And the acts of the agents of any such foreign corporation shall have the same force and validity as the acts of agents of private persons; but such foreign corporations shall not do or commit any act in this State contrary to the laws or policy thereof, and shall not be allowed to recover on any contract made in violation of law or public policy. ²²²

§ 167. Missouri.

"Every corporation for pecuniary profit formed in any other

²¹⁸ Miss. 1900, ch. 45, §§ 2, 4.

²¹⁹ Miss. Code, § 849.

²²⁰ Miss. Const. § 197.

²²¹ Miss. Code, §§ 129, 849.

²²² *Ibid.* § 849.

state, territory or country, before it shall be authorized or permitted to transact business in this state, or to continue business therein if already established, shall have and maintain a public office or place in this state for the transaction of its business, where legal service may be obtained upon it, and where proper books shall be kept to enable such corporation to comply with the constitutional and statutory provisions governing such corporation; and such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers. And no foreign corporation established or maintained in any way for pecuniary profit of its stockholders or members shall engage in any business other than that expressly authorized in its charter, or the law of this state under which it may come, nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business. And no corporation incorporated under the laws of any other state, territory or country, doing business in this state, shall be permitted to mortgage, pledge or otherwise encumber its real or personal property situated in this state, to the injury or exclusion of any citizen or corporation of this state who is a creditor of such foreign corporation, and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other state, shall take effect as against any citizen or corporation of this state, until all of its liabilities due to any person or corporation in this state at the time of recording such mortgage have been paid and extinguished." ²²³

Corporations formed outside the United States shall keep books in the office showing in detail the assets and liabilities and the names and residences of officers and shareholders; and each officer shall appoint an agent to accept service of process for him. ²²⁴

²²³ Mo. Rev. Stat. § 1024.

²²⁴ *Ibid.* § 1024a.

Every foreign corporation doing business in the State shall file in the office of Secretary of State a copy of its charter or articles of association, together with a sworn statement as to the nature of its business, and as to the proportion of its capital stock invested in property and business in Missouri; on this proportion its incorporation fees are paid. "Upon compliance with these provisions by the corporation the secretary of state shall give a certificate that said corporation has duly complied with the law, and is authorized to engage only in the business set out in the statement filed with its charter. Said certificate shall state the entire amount of its capital; the proportion thereof which is represented in Missouri, and the business which it is authorized to carry on; and the location of its principal office or place of business in this state; and such certificate shall be taken by all courts in this state as evidence that said corporation is entitled to all the rights and benefits of the laws relating to foreign corporations for the time set forth in its original charter, unless this shall be for a greater length of time than is contemplated by the laws of this state, in which event the duration shall be reckoned from the date of its incorporation to the limit of time set out in the laws of this state: *Provided*, that upon the expiration by limitation of the license heretofore issued to a foreign corporation, a new certificate and license may be issued for a period of fifty years from the date upon which it was originally licensed, should its corporate existence warrant such extension, by complying with all the provisions of the law governing the admission of a foreign corporation into this state: *Provided*, that the secretary of state shall not issue such certificate to any corporation having the name of any corporation heretofore incorporated in this state for similar purposes, or an imitation of such name: *Provided*, that nothing in this article shall be taken or construed into releasing foreign loan, building and loan or bond investment companies on the partial payment or installment plan from any provisions of law requiring them to make a deposit of money with a proper officer

of this state, to protect from loss the citizens of this state who may do business with such loan, building and loan or bond investment companies: *Provided*, that the requirements of this article to pay incorporation tax and fee shall not apply to railroad companies which have heretofore built their lines of railway into or through this state: *Provided*, that the provisions of this article are not intended to and shall not apply to 'drummers' or traveling salesmen soliciting business in this state for foreign corporations which are entirely non-resident; *and, provided further*, that the secretary of state shall not license any foreign corporation to do business in Missouri when it shall appear that such corporation was organized under the laws of a foreign state by citizens and residents of Missouri for the purpose of avoiding the laws of this state, as it would be a fraud upon the laws of both states, and its pretended incorporators would be held as partners, and as such become liable for the debts of the alleged corporation; *and further provided*, that no corporation organized under the laws of a foreign state shall be licensed to engage in the banking business, in any manner, in this state. *And provided further*, that this act shall not be construed as affecting any vested or existing right of any corporation."²²⁵ For violation of these provisions the corporation is liable to a fine of not less than one thousand dollars; in addition to which penalty no foreign corporation, as above defined, which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this State, upon any demand, whether arising out of contract or tort; *Provided*, that the provisions of this section shall not apply to railroad companies which have heretofore built their lines of railway into or through this State; nor to "drummers" or traveling salesmen soliciting business in this State for foreign corporations which are entirely non-resident.²²⁶ The foregoing provisions do not apply

²²⁵ *Ibid.* § 1025.

²²⁶ *Ibid.* § 1026.

to insurance companies.²²⁷ Manufacturing and business corporations must in addition procure a license from the Secretary of State to do business, which he will not grant if the corporation could not organize under the laws of Missouri. The fee is ten dollars.²²⁸

Special provisions are made for corporations of various kinds. Thus it is provided by the Constitution that "if any railroad company organized under the laws of this State shall consolidate, by sale or otherwise, with any railroad company organized under the laws of any other State, or of the United States, the same shall not thereby become a foreign corporation; but the courts of this State shall retain jurisdiction in all matters which may arise, as if said consolidation had not taken place. In no case shall any consolidation take place, except upon public notice of at least sixty days to all stockholders, in such manner as may be provided by law."²²⁹ Foreign building and loan associations deposit one hundred thousand dollars with the State Treasurer, file a copy of the charter and appointment of the State Treasurer as agent to receive service of process and pay special fees.²³⁰ Fraternal benefit associations are also subject to special provisions.²³¹

Any corporation incorporated by any other State or country, and having property in this State, shall be liable to be sued, and the property of the same shall be subject to attachment, in the same manner as individuals, residents of other States or countries, and having property, are now liable to be sued, and their property subject to be attached.²³² Service is made by delivering a copy of the writ and petition to any officer or agent of such corporation or company in charge of any office or place of business, or if it have no office or place of business, then to any officer, agent, or employee in any county where

²²⁷ *Ibid.* § 1027.

²²⁸ *Ibid.* §§ 1315-1317.

²²⁹ Mo. Const. Art. 12, § 18.

²³⁰ Mo. Rev. Stat. §§ 1379-1385.

²³¹ *Ibid.* § 1410.

²³² *Ibid.* § 1007.

such service may be obtained.²³³ Service may be made by publication if no agent can be found.²³⁴

§ 168. Montana.

The constitution provides that "no foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, State or territory shall have or be allowed to exercise or enjoy within this State any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the State;"²³⁵ and that if a corporation of Montana consolidates with a foreign corporation, the consolidated corporation "shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction over that part of the corporate property within the limits of the State in all matters that may arise as if said consolidation had not taken place."²³⁶

All foreign corporations or joint stock companies, organized under the laws of any State, or of the United States or of any foreign government, shall, before doing business within this State, file in the office of the Secretary of State, and in the office of the county clerk of the county wherein they intend to carry on business, a duly authenticated copy of their charter, or articles of incorporation, and also a statement of condition, including the name of the corporation, the location of its principal office within and outside the State, and the amount of its capital stock authorized and paid in. "Such corporation or joint stock company shall also file, at the same time, and in the same offices, a certificate, under the seal of the corporation, and the signature of its president, vice-president,

²³³ *Ibid.* § 570.

²³⁴ *Ibid.* §§ 581, 582.

²³⁵ Mont. Const. Art. 15, § 11.

²³⁶ *Ibid.* § 15.

or other acting head; and its secretary, if there be one, certifying that the said corporation has consented to be sued in the courts of this State, upon all causes of action arising against it in this State, and that service of process may be made upon some person, a citizen of this State, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company.²³⁷ The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of a consent, executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof and conclusive evidence of the authority of the officer executing it.²³⁸ If any foreign corporation shall attempt or commence to do business in this State without having first filed said statement, certificate and consent, required by this Act, no contract made by such corporation, or any agent or agents thereof, during the time it shall so neglect to file such statement, certificate or consent, shall be enforceable by the corporation until the foregoing provisions have been complied with.²³⁹ Every such corporation shall annually, and within two months from the first day of April of each year, make a report, which shall be in the same form, and contain the same information as required in the statement mentioned in section one of this Act, which report shall be filed in the office of the county clerk of the county wherein the business of said corporation is carried on, and a duplicate thereof in the office of the secretary of state.²⁴⁰ Every foreign corporation doing business in this

²³⁷ Mont. 1901, p. 150, § 1.

²³⁸ *Ibid.* § 2.

²³⁹ *Ibid.* § 3.

²⁴⁰ *Ibid.* § 4.

State contrary to the provisions of this Act is guilty of a misdemeanor. Every person who acts as agent or in any other capacity for a foreign corporation, who has not complied with the provisions of law relating to foreign corporations, is guilty of a misdemeanor.²⁴¹ Any foreign corporation or joint stock company now engaged in carrying on business in Montana, which has heretofore filed a copy of its charter or articles of incorporation, a statement, certificate designating an agent upon whom service of summons and other process may be made, and the consent of such agent in compliance with the provisions of Title XI, Part IV, Division 1 of the Civil Code of Montana shall not be required to comply with the provisions of sections one and two of this Act, provided, that if the agent designated and appointed by such corporation or joint stock company does not now reside in this State, or has resigned, or his appointment has been revoked, or if he shall hereafter reside out of the State, or resign, or his appointment be revoked, such corporation or joint stock company shall be required to designate another agent and file such designation and the consent of such agent in accordance with the provisions of this Act.”²⁴² A foreign corporation bringing suit may be required by the defendant to give security for costs.²⁴³

§ 169. Nebraska.

Every corporation (which includes foreign corporations) previous to the commencement of any business, must adopt articles of incorporation and have them filed in the office of the Secretary of State.²⁴⁴ Any corporation organized under the laws of any other State or States, Territory or Territories, which has filed or may hereafter file with the Secretary of State of this State a true copy of its charter or articles of association, shall, on filing with the Secretary of State a certified

²⁴¹ *Ibid.* §§ 5. 6.

²⁴² *Ibid.* § 8.

²⁴³ Mont. Co. Civ. Pro. § 1871.

²⁴⁴ Neb. Comp. L. § 1829.

copy of a resolution adopted by its board of directors accepting the provisions of this act, be and become a body corporate of this State.²⁴⁵ Foreign colleges and universities which comply with this provision may confer degrees.²⁴⁶ Foreign insurance companies which have assets of not less than fifty thousand dollars and comply with the laws of the State may receive certificates from the Auditor permitting business in the State. This does not apply to fraternal beneficiary societies.²⁴⁷

"Whenever the existing of future laws of any other state of the United States, or the rules and regulations of the insurance department of any such state, shall require of life insurance companies organized under the laws of this state any deposit of securities in such state for the security of the policy holders, or any payment of taxes, fines, penalties, certificates of authority, licenses, fees, or require any other duties, examinations, or acts than are by the laws of this state required of such companies organized under the laws of such other state, then the auditor of public accounts shall immediately require from every insurance company of any and every character whatever of such other state transacting or seeking to transact business in this state, the like payment of all licenses, fees, taxes, fines or penalties, and the like making of all deposits of securities and statements, and the like doing of all acts which by the laws or rules of the insurance department of such other state, are in excess of the licenses, fees, taxes, deposits, statements, fines, penalties, acts, examinations or duties required by the laws of this state of the companies of such other states." ²⁴⁸

"Any railroad company heretofore organized under the laws of the states of Kansas, Missouri, Iowa, Minnesota, or territory of Dakota, or any company so organized under the laws

²⁴⁵ *Ibid.* § 1946.

²⁴⁶ *Ibid.* § 1887.

²⁴⁷ *Ibid.* § 3491.

²⁴⁸ *Ibid.* § 3493. This is constitutional; *St. v. Ins. Co.*, (Neb.) 99 N. W.

of another state whose road may extend across any one or part of any one of these states or said territory, is hereby authorized to extend and build its road into the state of Nebraska. And such railroad company shall have and possess all the powers, franchises, and privileges, and be subject to the same liabilities of railroad companies organized and incorporated under the laws of this state; *Provided*, Such non-resident company shall first file a true copy of its articles of incorporation with the secretary of this state, and shall comply with the laws of the state of Nebraska, as to filing and recording articles of incorporation, and in all things required by law relating to railroads, and otherwise in this state, and such non-resident railroad company shall keep an office in this state in some county in which its road is, or is proposed to be and shall be liable to civil process, to be sued and to sue, as provided by law.”²⁴⁰ The mortgage, lease, or sale of such road to a Nebraska corporation, or to persons who shall form such a corporation, is authorized.²⁵⁰

Every foreign corporation violating any of the provisions of the anti-trust act is prohibited from doing any business within the State, and may be enjoined. For the purpose of obtaining service upon any foreign corporation or non-resident person in any suit or proceedings brought as provided in this act, it shall be sufficient to serve a summons upon any person in any county within the state who may be the agent of said foreign corporation or non-resident person, for the purpose of soliciting business or transacting or doing business for said corporation or non-resident person, at the time when summons is issued upon petition filed against said corporation, or non-resident person, or when summons is served on such agent.²⁵¹ A foreign corporation shall not take or hold real estate;²⁵² but if it has acquired a lien on such land it may perfect the

²⁴⁰ *Ibid.* § 4017.

²⁵⁰ *Ibid.* §§ 4018, 4019, 4020.

²⁵¹ *Ibid.* § 5339.

²⁵² *Ibid.* § 4396.

title, and it may enforce a lien or judgment by taking the land or buying it on judicial sale; in that case however the land shall be sold within ten years, otherwise it shall escheat to the State. The provisions of the act do not prevent a railroad or manufacturing company from acquiring real estate necessary for its business, nor do they apply to real estate lying within the corporate limits of cities and towns.²⁵³

A personal action against a foreign corporation may be brought in any State in which there may be property of, or debts owing to the defendant, or where said defendant may be found; but if said defendant be a foreign insurance company the action may be brought in any county where the cause or some part thereof arose.²⁵⁴ When a foreign corporation has a managing agent in this State, the service of process may be upon such agent.²⁵⁵ An attachment may be issued against a foreign corporation on a debt or demand arising upon contract or decree.²⁵⁶

§ 170. Nevada.

Every foreign corporation shall file in the office of the recorder of every county in which it carries on business, a copy of its charter, and a list of officers, which shall be corrected as often as the officers are changed. A copy certified by the county recorder may be introduced in evidence to prove the fact of the existence of such corporation without further proof.²⁵⁷ Any person who acts as the managing agent or superintendent of a foreign corporation which has not complied with this provision shall be guilty of a misdemeanor and fined from fifty to five hundred dollars, to which may be added imprisonment for not more than six months.²⁵⁸

Every foreign corporation owning property or doing business

²⁵³ *Ibid.* § 4399.

²⁵⁴ *Ibid.* § 4593.

²⁵⁵ *Ibid.* § 4613.

²⁵⁶ *Ibid.* § 4708.

²⁵⁷ Nev. Stat. § 1073.

²⁵⁸ *Ibid.* § 1074.

in the State shall appoint and keep an agent in the State on whom legal process may be served. A certificate shall be filed with the Secretary of State, giving the name and address of the agent, and this shall be renewed upon any change in the agency. Process served on such agent shall bind the corporation. If the corporation fails to make the appointment, process served on the Secretary of State shall bind the corporation.²⁵⁹

A corporation of Nevada may become consolidated with a foreign corporation, provided the consolidated corporation shall remain subject to the laws of Nevada.²⁶⁰ A foreign corporation may take, hold and enjoy land and exercise the right of eminent domain on the same terms as a domestic corporation.²⁶¹

Retaliatory provisions are as follows: "When, by the laws of any other State, country, Territory, colony, dependency or nation, any other or greater taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon corporations of this State, doing business in such other State or nation, or upon their agents therein, than the laws of this State impose upon their corporations or agents doing business in this State, so long as such laws continue in force in such other or foreign State or nation, Territory, colony, dependency, or country the same taxes, fines, penalties, licenses, fees, obligations and requirements of whatever kind shall be imposed upon all corporations of such other State or nation, country, Territory, colony or dependency doing business within this State and upon their agents here; *provided*, that nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporations of other States or nations transacting business in the State."²⁶²

Every foreign corporation doing business in Nevada must

²⁵⁹ *Ibid.* §§ 1074a, 1074b, 1074c.

²⁶⁰ *Ibid.* §§ 1075, 1076.

²⁶¹ *Ibid.* §§ 2655, 2656.

²⁶² Nev. 1903, ch. 121, § 106.

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publish in a newspaper an annual statement of business done; a penalty is provided, for failure to make such publication, of one hundred dollars for each month's neglect.²⁶³

Process may be served on a foreign corporation doing business in the State by service on an agent, cashier, or secretary, president or other head thereof. In the case of a California corporation special provisions are made.²⁶⁴ When service cannot be made in this way, service may be made by publication.²⁶⁵ Where a foreign corporation brings suit, it may be required to give security for costs.²⁶⁶ In all actions against such corporations, associations, or companies which have neglected to file the proper certificate or act of their incorporation, as heretofore provided, it shall be sufficient to establish the legal existence of such corporation by the proof of their acting as such.²⁶⁷

§ 171. New Hampshire.

"Manufacturing corporations not established by the laws of this state doing business in the state are authorized and empowered to acquire, hold, and convey real and personal property, and shall conform to the laws of the state as to returns and taxation, the same as domestic corporations."²⁶⁸ "Foreign corporations doing business in this state shall file with the state librarian, on or before the first day of January in each year, all printed reports of their condition issued by them during the twelve months preceding."²⁶⁹

§ 172. New Jersey.

Foreign corporations doing business in the State are subject

²⁶³ Nev. 1901, ch. 108, §§ 1, 3.

²⁶⁴ Nev. Stat. § 3051.

²⁶⁵ *Ibid.* § 3052.

²⁶⁶ *Ibid.* § 3510.

²⁶⁷ *Ibid.* § 1074.

²⁶⁸ N. H. Pub. Stat. ch. 148, § 21.

²⁶⁹ N. H. 1895, ch. 3, § 6.

to all the provisions of the general corporation law, so far as they can be applied to foreign corporations.²⁷⁰

“Every foreign corporation organized for pecuniary profit, except banking, insurance, ferry and railroad corporations, express companies, parlor, palace or sleeping-car companies, surety companies, and corporations using or occupying public streets, highways, roads or other public places in this State, before transacting any business in this State, shall file in the office of the secretary of state a copy of its charter or certificate of incorporation, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized and in the amount actually issued, the character of the business which it is to transact in this state, and designating its principal office in this state and an agent who shall be a domestic corporation or a natural person of full age actually resident in this state, together with his place of abode, upon which agent process against such corporation may be served, and an agency so constituted shall continue until the substitution, by writing, of another agent. Such corporation shall at the same time file with the Secretary of State a statement or report similar in all respects to the statement or report, if any, that is authorized by the laws of the state, territory or country in which such company is incorporated of corporations of New Jersey before they are allowed to transact business in such state, territory or country. Upon the filing of such paper or papers, and the payment of the fee required by law, and such further and additional sum, if any, as corporations of New Jersey are required by the laws of the state, territory or country where such corporations are incorporated to pay, before they are allowed to transact business in such state, territory or country, the secretary of state shall issue to such foreign corporation a certificate that it is authorized to transact business in this state, and that the business is such as may be lawfully transacted in this state, and he shall keep a record of such certifi-

²⁷⁰ N. J. Corp. Supp. § 96.

cates issued. It shall not be lawful for any such corporation to transact any business in any manner whatsoever, either directly or indirectly within this state, or to maintain any action or suit in this state upon any contract made by it, or for or on account of any transaction occurring, in this state, until it shall have obtained, and while it shall continue to hold as herein provided, the said certificate of the secretary of state. Any foreign corporation transacting any business in any manner whatsoever, directly or indirectly, in this state, without having first obtained and continuing to hold the certificate aforesaid, shall likewise forfeit for each offense to the state the sum of two hundred dollars, to be recovered with costs, in the name of the state, by the attorney-general.”²⁷¹ “If said agent shall die, remove from the state or become disqualified, such corporation shall forthwith file in the office of the secretary of state a written appointment of another agent, attested in the manner above provided, and in case of the omission to do so within thirty days after such death, removal or disqualification, then the secretary of state, upon being satisfied that such omission has continued for thirty days, shall, by entry on the record thereof, revoke the certificate of authority to transact business within this state; and process against such corporation in actions upon any liability incurred within this state before the designation of another agent may, after such revocation, be served upon the secretary of state; at the time of such service the plaintiff shall pay to the secretary of state for the use of the state two dollars, to be included in the taxable costs of such plaintiff, and the secretary of state shall forthwith mail a copy of such process to such corporation at its general office or to the address of some officer thereof, if known to him.”²⁷²

“Any corporation created by any other state or by any foreign state, kingdom or government may acquire by devise or otherwise and hold, mortgage, lease and convey real estate

²⁷¹ N. J. 1904, ch. 221, § 1.

²⁷² N. J. Corp. Supp. § 99.

in this state for the purpose of prosecuting its business or objects, or such real estate as it may acquire by way of mortgage or otherwise, in the payment of debts due such corporation; *provided*, such foreign state, kingdom or government, under whose laws such corporation was created, shall not be at the time of such purchase at war with the United States.”²⁷³ “It shall be lawful for any foreign corporation whatsoever, other than municipal corporations, purchase and convey, to lease, hold, occupy and use for the purposes of such corporation, such real estate in this state as may be devised or conveyed to it.”²⁷⁴

“In all personal suits or actions hereafter brought in any court of this state, against any foreign corporation, process may be served upon any officer, director, agent, clerk or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode, or by leaving a copy at the office, depot or usual place of business of such foreign corporation.”²⁷⁵ When process cannot be served upon the corporation, the court shall make an order for service by publication; and on non-appearance of the corporation after publication the action shall proceed as if appearance had been entered.²⁷⁶

“No corporation against which an order for publication shall be made, as aforesaid, shall grant, bargain, sell, alien or convey any lands, tenements or real estate in this state (in case the said summons issued out of the supreme court), or in the county in which the said summons shall have been issued (in case the said summons issued out of the circuit court or the court of common pleas), of which it shall be seized or entitled to at the time of making such order, until the plaintiff in the action shall be satisfied his legal demand, or until judgment shall be entered for the defendants; and the said

²⁷³ *Ibid.* § 95.

²⁷⁴ N. J. 1903, ch. 22.

²⁷⁵ N. J. Corp. Supp. § 88.

²⁷⁶ *Ibid.* § 90.

action shall be and remain a lien on such lands, tenements and real estate, from the time of entering the said order for publication in the minutes of the court, and the said lands, tenements and real estate shall and may be sold on execution, as if no conveyance had been made by the said corporation.”²⁷⁷ Attachments may issue against a foreign corporation.²⁷⁸ “In any proceeding in any court of this state against a foreign corporation requiring the use of any prerogative writ, such writ may be served upon the president, vice-president, secretary or other head officer, or any director, either personally or by leaving a copy at the dwelling-house or usual place of abode of such officer or director, or upon any general agent, attorney, solicitor, superintendent or manager of such corporation.”²⁷⁹ In case any such corporation, after the service of any such writ, as aforesaid, shall neglect or refuse to make a proper return thereto, or shall neglect or refuse to obey the command of any such writ, when issued upon any judgment, order or decree of the supreme court, court of chancery, or any of the circuit courts of this state, and served as aforesaid, within the time prescribed by such writ, said court may enforce such writs by attachment or sequestration of the property, rights and credits of the corporation within this state.”²⁸⁰

§ 173. New Mexico.

“Every company or corporation incorporated under the laws of any foreign state or kingdom, or of any state or territory of the United States, beyond the limits of this Territory, and now or hereafter doing business in this Territory, shall file in the office of the secretary of the Territory, a copy of its charter of incorporation, or of its articles of incorporation, together with the law or laws under which it is incorporated, each duly certified and authenticated by the proper authority

²⁷⁷ *Ibid.* § 91.

²⁷⁸ *Ibid.* § 100 a.

²⁷⁹ *Ibid.* § 102.

²⁸⁰ *Ibid.* § 103.

of such foreign state, kingdom or territory. Such company shall, also, before it is authorized or permitted to do business in this Territory, make and file with the secretary of the Territory, a certificate signed by the president and secretary of such company, duly acknowledged, designating the principal place where the business of such company shall be carried on in this Territory, and an authorized agent or agents residing at such principal place of business upon whom process may be served. A copy of such charter or articles of incorporation and certificate of place of business and agent, duly certified by the secretary of this Territory, shall be filed in the office of the recorder of deeds in the county in which the principal place of business of such corporation shall be.

“Such corporations shall have the same powers and shall be subject to all the liabilities and duties as corporations of a like character organized under the general laws of this Territory. But they shall have no other or greater powers, and no foreign or domestic corporation established or maintained in any way for pecuniary profit of its stockholders or members, shall purchase or hold real estate in this Territory, except as provided for in this act and the laws of the Territory now existing, and no corporation doing business in this Territory, incorporated under the laws of any other state, shall be permitted to mortgage, pledge or otherwise incumber its real or personal property, situated in this Territory, to the injury or exclusion of any citizen, citizens or corporations of this Territory, who are creditors of such foreign corporation, and no mortgage by any foreign corporation except railroad and telegraph companies, given to secure any debt created in any other state, shall take effect as against any citizen or corporation of this Territory until all its liabilities due to any person or corporation in this Territory at the time of recording such mortgage have been paid and extinguished.²⁸¹

“A failure to comply with the provisions of the foregoing section shall render each and every officer, agent and stock-

²⁸¹ N. Mex. Comp. L. § 445, amended 1903.

holder of any such corporation so failing, jointly, severally and personally, liable on any and all contracts of such company made within this Territory during the time that such company is so in default. And in addition such company or corporation shall be liable to forfeit and pay to the Territory of New Mexico, the sum of Fifty dollars (\$50.00) per day for each and every day in which it may carry on business or assume and hold itself out to carry on business in such Territory without fully complying with all the provisions hereinbefore provided, such sum to be collected by the solicitor general; and until payment is made such company shall not be allowed to carry on business." ²⁸² Copies of the charters so filed shall be *prima facie* evidence of the facts stated therein. ²⁸³

Foreign building and loan associations doing business within the Territory file an annual report of condition; ²⁸⁴ and if the assets of the company appear on examination to be insufficient to justify its continuance in business, the courts upon regular process may decree a dissolution. ²⁸⁵

A foreign insurance company in order to transact business in the Territory must have three hundred thousand dollars of actual paid-up capital (except accident insurance companies, which must have assets of one hundred thousand dollars exclusive of assets deposited in other States for the special security of the insured therein); and it must appoint an attorney in each county to accept service, who shall reside at the county seat; and it must file with the territorial auditor written authority for such attorney to receive service of process; and it must file a copy of its charter and statement of officers and condition; and if organized in a foreign country it must have deposited in some State or Territory one hundred thousand dollars for the special security of American assured. And if its capital is impaired to the extent of twenty per cent.

²⁸² *Ibid.* § 446.

²⁸³ *Ibid.* § 447.

²⁸⁴ *Ibid.* § 504.

²⁸⁵ *Ibid.* § 506.

it must cease doing business. An annual statement must be published in a newspaper published or at least circulating in each county where business is done. No agent shall transact business for the company without a certificate of authority from the territorial auditor.²⁸⁶ Similar provisions are made in the case of foreign building and loan associations.²⁸⁷

No corporation created by a foreign country or corporation more than twenty per cent. of whose stock is owned by aliens shall acquire or hold land in the Territory; land acquired in violation of this provision is forfeited to the United States.²⁸⁸

Suit may be brought by attachment against a foreign corporation whose principal office or place of business is outside the Territory, unless it has a designated agent in the Territory upon whom service of process may be had.²⁸⁹

§ 174. New York.

A foreign corporation is one not incorporated by or under the laws of the State or colony of New York.²⁹⁰

"No foreign stock corporation other than a moneyed corporation, shall do business in this state without having first procured from the secretary of state a certificate that it has complied with all the requirements of law to authorize it to do business in this state, and that the business of the corporation to be carried on in this state is such as may be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business, or, if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The secretary of state shall deliver such certificate to every such corporation so complying with the requirements of law. No such corporation now doing business in this state shall do business herein after December

²⁸⁶ *Ibid.* §§ 2117-2119.

²⁸⁷ N. Mex. 1899, ch. 72, §§ 16-20.

²⁸⁸ U. S. Stat. 1887, ch. 340.

²⁸⁹ N. Mex. Comp. L. § 2686.

²⁹⁰ N. Y. Gen. Corp. L. § 3, cl. 5.

thirty-first, eighteen hundred and ninety-two, without having procured such certificate from the secretary of state, but any lawful contract previously made by the corporation may be performed and enforced within this state subsequent to such date. No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state unless prior to the making of such contract it shall have procured such certificate. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee or such foreign stock corporation or under either of them. No certificate of authority shall be granted to any foreign corporation having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive."²⁹¹ Before granting the certificate, the Secretary of State shall require the foreign corporation to file a sworn copy in the English language, of its charter, and a statement of the nature of the business, the principal place of business within the State, and designating a person on whom process may be served, who must have an office at the designated place of business of the corporation. This designation of an agent can be revoked only by designating in the same way another agent. If upon the death or removal of such agent the corporation does not within thirty days designate another, the Secretary of State may revoke the authority of the corporation to do business in the State.²⁹²

Service of process on a foreign corporation may be made by service on the president, treasurer or secretary of the corporation, or upon the designated agent; or if such officer or agent cannot be found, and the corporation has property and the cause of action arose within the State, on the cashier, a director, or a managing agent of the corporation.²⁹³

An annual report of condition must be filed with the Secre-

²⁹¹ *Ibid.* § 15, amended 1901, ch. 96 and ch. 538.

²⁹² N. Y. Gen. Corp. L. § 16, amended 1895, ch. 672.

²⁹³ N. Y. Co. Civ. Pro. § 432.

tary of State, showing the amount of capital stock and amount issued, the amount of its debts or an amount which they do not exceed, and the amount of its assets or an amount they at least equal.²⁹⁴ "Every foreign stock corporation having an office for the transaction of business in this state, except moneyed and railroad corporations, shall keep therein a book to be known as a stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. Such stock book shall be open daily, during business hours, for the inspection of its stockholders and judgment creditors, and any officer of the state authorized by law to investigate the affairs of any such corporation. If any such foreign stock corporation has in this state a transfer agent, whether such agent shall be a corporation or a natural person, such stock book may be deposited in the office of such agent and shall be open to inspection at all times during the usual hours of transacting business, to any stockholder, judgment creditor or officer of the state authorized by law to investigate the affairs of such corporation. For any refusal to allow such book to be inspected, such corporation and the officer or agent so refusing shall each forfeit the sum of two hundred and fifty dollars to be recovered by the person to whom such refusal was made." ²⁹⁵

"The officers, directors and stockholders of a foreign stock corporation transacting business in this state, except moneyed and railroad corporations, shall be liable under the provisions of this chapter, in the same manner and to the same extent as the officers, directors and stockholders of a domestic corporation, for: 1. The making of unauthorized dividends; 2. The creation of unauthorized and excessive indebtedness; 3. Unlawful loans to stockholders; 4. Making false certificates,

²⁹⁴ N. Y. Stock Corp. L. § 30, as amended 1901, ch. 354.

²⁹⁵ *Ibid.* § 53, as amended 1897, ch. 384, § 3.

reports or public notices; 5. An illegal transfer of the stock and property of such corporation, when it is insolvent or its insolvency is threatened; 6. The failure to file an annual report. Such liabilities may be enforced in the courts of this state, in the same manner as similar liabilities imposed by law upon the officers, directors and stockholders of domestic corporations." ²⁹⁶

Any foreign corporation created in the United States doing business in the State may acquire such real property in the State as may be necessary for its corporate purposes in the transaction of business in the State, and may convey it, in the same manner as a domestic corporation. ²⁹⁷

Any foreign corporation may purchase at a sale upon the foreclosure of any mortgage held by it, or upon any judgment or decree for debts due it, or upon any settlement to secure such debts, any real property within this State covered by or subject to such mortgage, judgment, decree, or settlement, and may take by devise any real property situated within this State and hold the same for not exceeding five years from the date of such purchase, or from the time when the right to the possession thereof vests in such devisee, and convey it by deed or otherwise, in the same manner as a domestic corporation. ²⁹⁸

No foreign corporation doing business in the State shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life. ²⁹⁹ But ordinary consolidations of two corporations, permitted by the law that governs them and within the general scope of their business, are permitted. ³⁰⁰

"An action may be maintained by a foreign corporation

²⁹⁶ *Ibid.* § 60, added 1897, ch. 384, § 4.

²⁹⁷ N. Y. Gen. Corp. L. § 17, as amended 1892, ch. 687.

²⁹⁸ *Ibid.* § 18, as amended 1892, ch. 687, and 1894, ch. 136.

²⁹⁹ N. Y. Stock Corp. L. § 7, as amended 1897, ch. 384, § 1.

³⁰⁰ *Ibid.* § 40.

in like manner and subject to the same regulations as where the action is brought by a domestic corporation, except as otherwise specially prescribed by law. But a foreign corporation cannot maintain an action, founded upon an act or upon a liability or obligation, express or implied, arising out of, or made and entered into in consideration of, an act, which the laws of the State forbid a corporation or association of individuals to do without express authority of law. This section does not affect the validity of a meeting of the stockholders or directors of a foreign corporation, held within the State, where such a meeting is authorized by the laws of the State, country, or government by or under which the corporation is created, or of an act done at such a meeting which is not in conflict with the same laws, or the laws of the State."³⁰¹ The defendant in an action brought by a foreign corporation may require security for costs to be given.³⁰²

An action against a foreign corporation may be maintained by a resident of the State, or by a domestic corporation, for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only: 1. Where the action is brought to recover damages for the breach of a contract made within the State, or relating to property situated within the State, at the time of the making thereof. 2. Where it is brought to recover real property situated within the State, or a chattel which is replevied within the State. 3. Where the cause of action arose within the State, except where the object of the action is to affect the title to real property situated without the State.³⁰³ The attorney general may maintain an action upon his own information or upon the complaint of a private person against a foreign corporation which exercises within the State any corporate rights, privileges or franchises not granted to it by the law of this State; or which

³⁰¹ N. Y. Co. Civ. Pro. § 1779.

³⁰² *Ibid.* § 3268.

³⁰³ *Ibid.* § 1780.

within the State has violated any provision of law, or contrary to law has done or omitted any act or has exercised a privilege or franchise not conferred upon it by the law of this State, where in a similar case a domestic corporation would be liable to an action to vacate its charter and to annul its existence; or which exercises within the State any corporate rights, privileges or franchises in a manner contrary to the public policy of the State.³⁰⁴

A warrant of attachment against the property of a foreign corporation may be granted where the action is for breach of contract, express or implied (other than a contract to marry); for wrongful conversion of personal property; and for an injury to property in consequence of negligence, fraud or other wrongful act.³⁰⁵ Where a foreign corporation cannot be personally served, and is therefore served with process by publication pursuant to an order of court³⁰⁶ the judgment can be enforced only against the property which has been levied upon, by virtue of the warrant of attachment, at the time when the judgment is entered. But this section does not declare the effect of such a judgment with respect to the application of any statute of limitation.³⁰⁷

Where a party wishes to prove an act or transaction of a foreign corporation the book or books of the corporation may be used for that purpose as presumptive evidence, whoever the parties may be.³⁰⁸

§ 175. North Carolina.

"Each foreign corporation before being permitted to do business in the State of North Carolina, railroad, banking, insurance, express and telegraph companies excepted, shall file in the office of the Secretary of State a copy of its charter or articles of agreement, attested by its president and secretary,

³⁰⁴ *Ibid.* § 1948, cl. 4.

³⁰⁵ *Ibid.* §§ 635, 636.

³⁰⁶ *Ibid.* § 5.

³⁰⁷ *Ibid.* § 707.

³⁰⁸ *Ibid.* § 929.

under its corporate seal, and a statement attested in like manner, of the amount of its capital stock authorized, the amount actually issued, the principal office in this State, the name of the agent in charge of such office, the character of the business which it transacts and the names and post-office address of its officers and directors. And such corporation shall pay to the Secretary of State for the use of the State ten cents for every one thousand dollars of the total amount of the capital stock authorized to be issued by such corporation, but in no case less than ten dollars, nor more than one hundred dollars. And every corporation failing to comply with the provisions of this section shall forfeit to the State five hundred dollars, to be recovered, with costs, in an action to be prosecuted by the Attorney-General, who shall prosecute such actions whenever it shall appear that this section has been violated.”³⁰⁹ The excepted corporations (omitting banking corporations) cannot do business in North Carolina without being incorporated in that State. Such a foreign corporation shall file a copy of its charter and by-laws in the office of the Secretary of State. If these are in contravention or violation of the laws of the State, such parts of them as violate the laws are void. Having complied with the law, “it shall thereupon immediately become a corporation of this State and shall enjoy the rights and privileges and be subject to the liability of corporations of this State the same as if such corporation had been originally created by the laws of this State. It may sue and be sued in all the courts of this State and shall be subject to the jurisdiction of the courts of this State as fully as if such corporation were originally created under the laws of the State of North Carolina.”³¹⁰

No such corporation until it becomes a domestic corporation can sue in the courts of the State or enter into a contract in the State;³¹¹ for every day in which business is done in the

³⁰⁹ N. Car. 1901, ch. 2, § 57, as amended Mar. 9, 1903.

³¹⁰ N. Car. 1899, ch. 62, §§ 1-4.

³¹¹ *Ibid.* §§ 6, 7.

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State in violation of the provisions of the act such a corporation shall forfeit five hundred dollars; and for each day's delay in obeying the act, two hundred dollars.³¹²

Any foreign corporation may acquire by devise or otherwise and hold, mortgage, lease and convey real estate in the State for the purpose of prosecuting its business or objects, or in the payment of debts due the corporation or by way of mortgage; provided the State that created the corporation be not at war with the United States³¹³

Every corporation authorized to transact business in the State shall file an annual statement including the location of its principal office in the State and the name of the agent in charge of the office on whom process against the corporation may be served. Every corporation failing to comply with this provision shall forfeit one hundred dollars. This does not apply to corporations which file similar statements with the Commissioner of Insurance or the Corporation Commission.³¹⁴

Every corporation having property and doing business in the State shall have an officer or agent in the State upon whom process may be served. Such a corporation having no agent in the State must appoint an agent in writing, and file the appointment with the Corporation Commission; and the record of the appointment shall be open to the inspection and examination of any and all persons. A corporation failing to comply with this act shall be liable to a revocation of its license to do business in the State; and if it fail to comply within sixty days, process against the corporation may be served upon the Secretary of the Corporation Commission.³¹⁵ Summons may be served upon a foreign corporation by serving on an officer or local agent, but only when it has property within the State, or the cause of action arose therein, or when the plaintiff resides in the State, or when service can be made within the State

³¹² *Ibid.* §§ 5, 8.

³¹³ N. Car. 1901, ch. 2, § 93.

³¹⁴ *Ibid.* § 48.

³¹⁵ N. Car. 1901, ch. 5.

personally upon the president, secretary or treasurer.³¹⁶ When no one can be found on whom to serve process, service may be made by publication where the foreign corporation has property within the State or the cause of action arose there.³¹⁷

§ 176. North Dakota.

The Constitution provides that "no foreign corporation shall do business in this State without having one or more places of business and an authorized agent or agents in the same upon whom process may be served."³¹⁸

"No foreign corporation, association or joint stock company, except an insurance company, shall transact any business within this state, or acquire, hold or dispose of property, real or personal within this state, until such corporation shall have filed in the office of the secretary of state a duly authenticated copy of its charter or articles of incorporation and shall have complied with the provisions of this chapter; provided, that the provisions of this chapter shall not apply to corporations created for religious or charitable purposes solely. Such charter or articles of incorporation shall be recorded in a book to be kept by the secretary of state for that purpose."³¹⁹

"Such corporation, association or joint stock company shall by a duly executed instrument filed in the office of the secretary of state constitute and appoint the secretary of state and his successors its true and lawful attorney upon whom all process in any action or proceeding against it may be served and therein shall agree that any process which may be served upon its said attorney shall be of the same force and validity as if served upon it personally in this state and that such appointment shall continue in force irrevocable so long as any liability of the corporation, association or joint stock company remains outstanding in this state. Service upon such attorney

³¹⁶ N. C. Code, § 217.

³¹⁷ *Ibid.* § 218.

³¹⁸ N. Dak. Const. § 136.

³¹⁹ N. Dak. Rev. Code, §§ 3261, 3262.

shall be deemed sufficient service upon the corporation, association or joint stock company. Whenever process against any foreign corporation, association or joint stock company, doing business in this state, shall be served upon the secretary of state he shall forthwith mail a copy of such process, postage prepaid, and directed to such corporation, association or joint company at its principal place of business, or if it is a corporation, association or joint stock company of a foreign country, to its resident manager in the United States, or to such other person as may have been previously designated by it by written notice filed in the office of the secretary of state. As a condition of valid and effectual service the plaintiff shall pay to the secretary of state at the time of the service the sum of two dollars which the plaintiff shall recover as taxable costs if he prevails in his action. The secretary of state shall keep a record of all such process which shall show the time and hour of service.³²⁰ Any failure to comply with the provisions of the last three sections and with section 3116 of this code shall render each and every officer, agent or stockholder of any corporation, association or joint stock company failing to comply therewith, jointly and severally liable on any and all contracts of such corporation, association or joint stock company made within this state during the time such corporation, association or joint stock company is so in default.³²¹ Every contract made by or on behalf of any corporation, association or joint stock company, doing business in this state, without first having complied with the provisions of section 3116, if an insurance company, or with the provisions of sections 3261 and 3263, if other than an insurance company, shall be wholly void on behalf of such corporation, association or joint stock company and its assigns, but any contract so made in violation of the provisions of this section may be enforced against such corporation, association or joint stock company."³²²

³²⁰ *Ibid.* § 3263.

³²¹ *Ibid.* § 3264.

³²² *Ibid.* § 3265.

“No foreign insurance company shall directly or indirectly take any risk or transact the business of insurance in this state until: 1. It shall deposit with the insurance commissioner a certified copy of its articles of incorporation and a statement of its financial condition and business in such form and detail as he may require, signed and sworn to by its president and secretary or other proper officers. 2. It shall satisfy the insurance commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact; that it has a fully paid up and unimpaired capital, exclusive of stockholders' obligations of any description, of an amount not less than [two hundred thousand dollars] and, if a mutual company, that its assets are not less than [two hundred thousand dollars]; that such capital or net assets are well invested and immediately available for the payment of losses in this state; and that it insures on any single hazard a sum no larger than one-tenth of its net assets. 3. It shall by a duly executed instrument, filed in his office, constitute and appoint the commissioner of insurance and his successors its true and lawful attorney upon whom all process in any action or proceeding against it may be served and therein shall agree that any process which may be served upon its said attorney shall be of the same force and validity as if served on the company and that the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state. Service upon such attorney shall be deemed sufficient service upon the company. Whenever process against any foreign insurance company, doing business in this state, shall be served upon the commissioner of insurance, he shall forthwith mail a copy of such process, postage prepaid, and directed to such company at its principal place of business, or if it is a foreign company, to its resident manager in the United States, or to such other person as may have been previously designated by it by written notice filed in the office of the commissioner of insurance. As a condition of valid and effectual service the plaintiff shall pay

to the commissioner of insurance at the time of service the sum of two dollars, which the plaintiff shall recover as taxable costs if he shall prevail in his action. The commissioner shall keep a record of all such process which shall show the time and hour of service. 4. It shall appoint as its agents in this state only residents thereof.”³²³ No single risk shall be greater than ten per cent. of the paid-up capital,³²⁴ nor in any one city shall all risks be greater than its net assets.³²⁵ An annual statement of condition must be published.³²⁶ No agent shall act without a certificate from the commissioner of insurance, who shall issue it only after an examination of the condition of the company;³²⁷ and all certificates must be revoked if upon examination the company appears to be in an unsound condition; and information of such revocation shall be published in the newspapers.³²⁸ “No foreign insurance company authorized to transact business in the state shall make, write, place or cause to be made, written or placed, any policy, duplicate policy or contract of insurance of any kind or character, or any general or floating policy, upon property situated or located in this state except after the said risk has been approved, in writing, by an agent who is a resident of this state, regularly commissioned and licensed to transact insurance business therein, who shall countersign all policies so issued and make a record of the same on books provided for that purpose and receive the commission thereon when the premium is paid, to the end that the state may receive the taxes required by law to be paid on the premiums collected for insurance on all property located in the state, and the agent be paid the commission thereon. Nothing in this act shall be construed to prevent any such insurance company or associa-

³²³ *Ibid.* § 3116.

³²⁴ *Ibid.* § 3117.

³²⁵ *Ibid.* § 3118.

³²⁶ *Ibid.* §§ 3119, 3120.

³²⁷ *Ibid.* §§ 3124, 3125.

³²⁸ *Ibid.* § 3128.

tion, authorized to transact business in this state from issuing policies at its principal or department offices covering property in this state, provided that such policies are issued upon applications procured and submitted to such company by agents who are residents of this state, and licensed to transact the business of insurance herein and who shall countersign all policies so issued and receive the commission thereon when paid; provided, no provision of this section is intended to or shall apply to direct insurance covering the rolling stock of railroad corporations or property in transit while in the possession and custody of railroad corporations or other common carriers, nor to the movable property of such common carriers used or employed by them in their business as common carriers of freight, merchandise or passengers.”³²⁹ No fire insurance company or association shall reinsure, or assume as a reinsuring company or otherwise in any manner or form whatever, the whole or any part of any risk or liability, covering property located in this state, of any insurance company or association not authorized to transact business in this state.³³⁰ Whenever the commissioner of insurance shall have or receive information that any fire insurance company or association, not incorporated under the laws of this state, has violated any of the provisions of section 1 of this act, he is authorized, at the expense of such company or association, to examine, by himself or his accredited representative, at the principal office or offices of such company or association, located in the United States of America, and also at such other offices or agencies of such company or association as he may deem proper, all books, records and papers of such company or association, and may examine under oath, the officers and managers and agents of such company or association as to such violation or violations. The refusal of any such company or association to submit to such examination or to exhibit its books and records for inspection shall be presumptive evidence that it is violating

³²⁹ N. Dak. 1901, ch. 100, § 1.

³³⁰ *Ibid.* § 2.

the provisions of the first section of this act and shall subject it to the penalties prescribed and imposed by this act.³³¹ Any insurance company or association violating or failing to observe and comply with any of the provisions of this act, applicable thereto, shall be subject to and liable to pay a penalty of five hundred dollars for each violation thereof and for each failure to observe and comply with any provisions of this act; such penalty may be collected and recovered in an action brought in the name of the state in any court having jurisdiction thereof. Any insurance company or association which shall neglect and refuse for thirty days after judgment in any such action to pay and discharge the amount of such judgment shall have its authority to transact business in this state revoked by the commissioner of insurance and such revocation shall continue for at least one year from the date thereof, nor shall any insurance company or association whose authority to transact business in this state shall have been revoked be again authorized or permitted to transact business herein until it shall have paid the amount of any such judgment and shall have filed in the office of the commissioner of insurance a certificate signed by its president or other chief officer to the effect that the terms and obligations of the provisions of this act are accepted by it as a part of the conditions of its right and authority to transact business in this state.”³³² “Any insurance company doing business in this state that neglects to make the statements in the manner and within the time in this article required shall forfeit one hundred dollars for each day’s neglect, and upon notice by the insurance commissioner to that effect, its authority to do new business shall cease while such default continues and every such company that wilfully makes false statements shall be liable to a fine of not less than five hundred nor more than one thousand dollars. Any new business done by the insurance company after neglect to make the required statements shall be deemed to be done

³³¹ *Ibid.* § 3.

³³² *Ibid.* § 4.

in violation of law.³³³ For violation of any provision of this chapter when no penalty is specifically provided for herein the offender shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.³³⁴ "Whenever the laws of any other state of the United States or foreign country shall require of insurance companies incorporated under the laws of this state, or of the agent thereof, any deposits of securities in such state for the protection of policy holders or otherwise, or any payment for taxes, fines, penalties, certificate of authority, license or fees greater than the amount required for such purposes from similar companies of other states by the then existing laws of this state, then and in every such case, all insurance companies of such states establishing or having heretofore established an agency in this state, shall be and are hereby required to make the same deposit for a like purpose with the state treasurer of this state, and to pay to the commissioner of insurance an amount equal to the amount of such charges and payment imposed by the laws of such other states upon the companies of this state and the agents thereof." ³³⁵

Similar provisions apply to foreign building and loan associations.³³⁶

A foreign corporation may sue and be sued like a domestic corporation; but it cannot maintain any action founded on an act or on any liability or obligation, express or implied, arising out of any act which the laws of this State forbid a corporation or association of individuals to do without express authority.³³⁷ When the plaintiff is a foreign corporation it must give security for costs.³³⁸ An action may be prosecuted to judgment against a foreign corporation after it has ceased to act as such, and the judgment may be satisfied out of any

³³³ N. Dak. Rev. Code, § 3130.

³³⁴ *Ibid.* § 3131.

³³⁵ *Ibid.* § 3133.

³³⁶ *Ibid.* §§ 3220-3223.

³³⁷ N. Dak. Co. Civ. Pro. § 5756.

³³⁸ *Ibid.* § 5597.

property in the State which the corporation would own if it had not ceased to act as such.³³⁹ An action against a foreign corporation may be begun by an attachment, if it is on a contract or judgment for the recovery of money only, or for the wrongful conversion of personal property.³⁴⁰

§ 177. Ohio.

Foreign corporations doing business in the State file an annual statement showing the number and par value of shares, names and addresses of agents and location of offices, and names and addresses of officers and date of election, name, place of charter and of principal office, and nature of corporation, value of property used in Ohio and of all property. This statement serves as the basis of assessment of taxes, which are levied on that part of the capital used in Ohio; and the act does not apply to corporations taxed otherwise, viz: insurance, bank, building and loan and investment companies, or express, telegraph, telephone, railroad, sleeping car, transportation, or other corporations engaged in Ohio in interstate commerce business, or to foreign corporations, entirely non-resident, soliciting business or making sales in Ohio by correspondence or by traveling salesmen. No foreign corporation subject to the provisions of this section shall maintain any action in Ohio on a contract made by it in Ohio without complying with this section. If any person solicits or transacts business in the State for such a foreign corporation before it has complied with the law he shall be fined from ten to five hundred dollars or imprisoned from ten days to six months or both.³⁴¹

No foreign corporation except banking or insurance companies shall do business in the State without a certificate from the Secretary of State that it has complied with the laws of the State, and that the business of the corporation is such as

³³⁹ *Ibid.* § 5757.

³⁴⁰ *Ibid.* § 5352.

³⁴¹ Oh. Stat. 148c; 1902, p. 124, § 2.

might lawfully be carried on by a corporation or corporations created by the laws of Ohio. No corporation can maintain action on any contract made in the State before getting such certificate. In order to obtain the certificate, the corporation must file a copy of its charter and a statement of the amount of its capital stock, the business or objects of the corporation, and the principal place of business in the State, and must designate a person on whom process against the corporation may be served; he must have an office at the principal place of business of the corporation within the State. The designation shall continue until revoked in a writing designating another agent; and any vacancy by death or removal must be filled within thirty days or the authority of the corporation to transact business within the State shall be revoked. Meanwhile process may be served on the Secretary of State. Any one who solicits or transacts business for the corporation before it has complied with these requirements shall be fined from ten to five hundred dollars, or imprisoned from ten days to six months, or both.³⁴²

A foreign insurance company may appoint one or more general agents by resolution of its board of directors, with authority to appoint other agents in the State. A certified copy of the resolution shall be filed with the superintendent of insurance, and agents appointed by the general agent shall be held to be agents of the company as fully to all intents and purposes, as if they were appointed by the company. Agents may also be appointed in writing by the president, vice-president, chief manager or secretary thereof.³⁴³ Foreign life insurance companies must procure a license from the superintendent of insurance before doing business in the State; and each agent before acting must also procure a license. The license must state the compliance of the company with all the requirements of law, and must be deposited in the office of the recorder of the county in which the agent does business.

³⁴² *Ibid.* § 148 d.

³⁴³ *Ibid.* § 285.

No company shall take risks in the State unless it has a paid-up capital of one hundred thousand dollars or in case of a mutual company, actual cash assets of the same amount.³⁴⁴ It must have deposited in some State public bonds of the market value of one hundred thousand dollars, or mortgages of that amount on unincumbered real estate in Ohio or the State of charter of double the value of the amount loaned.³⁴⁵ It must file a copy of its charter, a statement of condition, and an annual statement.³⁴⁶ It must file written consent to have service of process on any agent, or after it ceases to do business in the State and to have an agent then to accept service by notice sent by mail to the general office of the company.³⁴⁷ The license for agents must be renewed annually.³⁴⁸ If the company ceases to do business in the State it must nevertheless appoint agents to receive service of process; and in default of such appointment the last agents shall continue to have authority for such purpose.³⁴⁹ If a foreign insurance company applies to remove a suit to the Federal court its license to do business shall be withdrawn, and cannot be renewed for three years.³⁵⁰ Life or accident companies on the assessment plan are subject to similar regulations,³⁵¹ as are foreign fraternal benefit associations,³⁵² and other insurance companies.³⁵³ No insurance company can do banking or any other kind of business in connection with insurance.³⁵⁴

A foreign building and loan association must conform to all laws governing domestic associations. It must deposit with the inspector one hundred thousand dollars in public bonds;

³⁴⁴ *Ibid.* § 3604.

³⁴⁵ *Ibid.* § 3605.

³⁴⁶ *Ibid.* §§ 3606, 3608.

³⁴⁷ *Ibid.* § 3607.

³⁴⁸ *Ibid.* § 3609.

³⁴⁹ *Ibid.* §§ 3617, 3618.

³⁵⁰ *Ibid.* § 3620.

³⁵¹ *Ibid.* § 3630 e.

³⁵² *Ibid.* § 3631, cl. 13, 14, 15, 16, 34.

³⁵³ *Ibid.* §§ 3656-3661.

³⁵⁴ *Ibid.* § 3656.

must file a certified copy of its charter and by-laws and a statement of condition; and an agreement that process against it may be served on the inspector.³⁵⁵ The inspector if satisfied issues a certificate of authority to do business in the State, which must be renewed annually.³⁵⁶

A transitory action against a foreign corporation may be brought in any county where there is property of or debts owing to the defendant or where such defendant is found; or if the defendant is a foreign insurance company, in a county where the cause or some part thereof arose.³⁵⁷ Process against a foreign railroad company may be served upon any regular ticket or freight agent, or if there is no such agent in the county then on a conductor.³⁵⁸ Service on an insurance company may be on the chief officer of its agency in any county.³⁵⁹ If any foreign corporation has a managing agent in the State, service may be on such agent.³⁶⁰ An attachment without filing an undertaking may be issued against a foreign corporation.³⁶¹

§ 178. Oklahoma.

"No corporation created or organized under the laws of any other state or territory shall transact any business within this Territory, or acquire, hold, and dispose of property, real, personal or mixed, within this Territory, until such corporation shall have filed in the office of the Secretary of the Territory, a duly authenticated copy of its charter or articles of incorporation, and shall have complied with the provisions of this article: Provided, That the provisions of this act shall not apply to corporations or associations created for religious or

³⁵⁵ *Ibid.* § 3836, cl. 12.

³⁵⁶ *Ibid.* § 3836, cl. 13.

³⁵⁷ *Ibid.* § 5030.

³⁵⁸ *Ibid.* § 5041.

³⁵⁹ *Ibid.* § 5042.

³⁶⁰ *Ibid.* § 5043.

³⁶¹ Ohio, 1902, p. 362.

charitable purposes solely.”³⁶² “Such corporations shall appoint an agent, who shall reside at some accessible point in this Territory, in the county where the principal business of said corporation shall be carried on, or at some place in said Territory, if such corporation has no principal place of business herein, duly authorized to accept service of process and upon whom service of process may be made in any action in which said corporation may be a party; and that any such action may be brought in the county where such agent resides or in any county in which the business, or any part of it, out of which said action arose, was transacted; and service upon such agent shall be taken and held as due service upon such corporation. A duly authenticated copy of the appointment or commission of such agent shall be filed and recorded in the office of the Secretary of the Territory and register of deeds of the county where said agent resides, and a certified copy thereof by the secretary or register of deeds shall be conclusive evidence of the appointment and authority of such agent.”³⁶³ Similar provisions are made for foreign guaranty companies,³⁶⁴ which must also file annual statements.³⁶⁵

“Any railroad corporation chartered or organized under the laws of the United States, or any state or territory whose constructed railroad shall reach or intersect the boundary line of this Territory at any point, may extend its railroad into this Territory from any such point or points to any place or places within the Territory, and may build branches from any point on such extension.”³⁶⁶

By Act of Congress it is provided that it is unlawful for any corporation not created under the laws of the United States or some State or Territory to hereafter acquire or hold real estate within the limits of the United States, except such

³⁶² Okl. Stat. § 1225.

³⁶³ *Ibid.* § 1227.

³⁶⁴ *Ibid.* §§ 1137, 1138.

³⁶⁵ *Ibid.* § 1139.

³⁶⁶ *Ibid.* § 1039.

as may be acquired by inheritance or in good faith in the collection of debts heretofore created; provided, that this shall not apply to cases in which such right is secured to citizens or subjects of foreign countries by existing treaties. No corporation or association more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations, not citizens of the United States, shall hereafter acquire or hold or own any real estate hereafter acquired in any of the Territories of the United States or in the District of Columbia. All property acquired, held or owned in violation of the provisions of this Act shall be forfeited to the United States.³⁶⁷

§ 179. Oregon.

"Every foreign corporation, joint stock company, or association, now doing business in this state, or that may hereafter do business in this state, except fire, marine, fire and marine, life, accident, life and accident, plate glass and steam-boiler insurance companies, and surety companies, shall, during the month of June of each year, and on or before the first day of July of each year, furnish to the Secretary of State a sworn statement, containing the name of the corporation, the location of its principal office, the names of the president, secretary, and treasurer, with the post office address of each, date of the annual election of directors and officers of such corporation, joint stock company, or association, the amount of authorized capital stock, the number of shares and par value of each share, the amount of capital stock subscribed, the amount of capital stock issued, and the amount of capital stock paid up. Every foreign corporation, joint stock company, or association shall include in such statement the names and post office addresses of its managing agent and attorneys in fact in this state."³⁶⁸ The foreign corporation shall also "duly execute and acknowledge a power of attorney, and

³⁶⁷ U. S. 1887, ch. 340, §§ 1, 2, 3.

³⁶⁸ Ore. 1903, p. 43, § 5.

cause the same to be recorded in the office of the Secretary of State, which power of attorney shall be irrevocable, except by the substitution of another qualified person for the one mentioned therein as attorney in fact, and such power of attorney shall appoint some person, who is a citizen of the United States and a citizen and resident of this state, as attorney in fact for such foreign corporation, joint stock company, or association, and such appointment shall be deemed to authorize and empower such attorney to accept service of all writs, process, and summons, requisite or necessary to give complete jurisdiction of any such corporation, joint stock company, or association to any of the courts of this state or United States courts therein, and shall be deemed to constitute such attorney the authorized agent of such corporation, joint stock company, or association upon whom lawful and valid service may be made of all writs, process, and summons in any action, suit, or proceeding, commenced by or against any such corporation, joint stock company, or association, in any court mentioned in this section, and necessary to give such court complete jurisdiction thereof. It shall be the duty of every such foreign corporation, joint stock company, or association, to maintain, at all times within this state, some qualified person as its attorney in fact, as herein provided, and in default thereof, it shall not be entitled to transact any business within this state or maintain any suit, action, or proceeding in its courts." In case of the death, removal or disqualification of the attorney or failure of the company to maintain an attorney, process may be served on the corporation by service on the Secretary of State.³⁶⁹

Every foreign corporation of any kind before transacting business in the State "shall file with the Secretary of State a written declaration of its desire and purpose to engage in business within this State, and must set forth a full name under which it proposes to transact business, the name of the state or county under whose laws it was organized, the location

³⁶⁹ *Ibid.* § 6.

of its home office, the date of its formation or incorporation, the amount of its capital stock, the nature of the pursuit, business, or occupation in which it is authorized to engage, the location of its principal office within this state, and name of its attorney in fact, who shall be constituted and appointed in accordance with section 6 of this act, the names and addresses of its principal officers, and of its directors or trustees, and the name and residence of its general agent within the State of Oregon; and said declaration shall be accompanied by a certified copy of the charter or articles of incorporation, certified to by the legal keeper of the original, together with a certificate of the secretary of state of a state or territory of the United States, or of a United States ambassador, minister, consul general, vice consul, or charge d'affaires in a foreign country under whose jurisdiction such corporation, joint stock company, or association was formed, that such certifying officer has the requisite official knowledge as to whether such charter or articles of incorporation are of a genuine, valid, and subsisting character, and that such copy is duly certified by the officer having the legal custody of the original." If the Secretary of State finds the certificate satisfactory he shall (after the payment of a fee of \$50.00) issue his certificate of authority to do business. The certificate, accompanied by a receipt for payment of the fee, "shall be *prima facie* evidence of the legal existence of such foreign corporation, joint stock company, or association, and of its right to begin the transaction of the business specified within the State of Oregon, whether the same shall be questioned in any court of justice in this state, or before any commission, board, officer, magistrate, or inferior tribunal whatsoever." Insurance companies are exempt from payment of the fee.³⁷⁰ When a corporation has failed to pay all fees and taxes due the fact of delinquency shall be published; and "while such delinquency shall continue, the right of such delinquent corporation, company, or association to transact business shall be deemed to be in

³⁷⁰ *Ibid.* § 7.

abeyance, and such corporation, joint stock company, or association shall not be permitted to maintain any suit, action, or proceeding in any court of justice in this state; but the said delinquency of such corporation or joint stock company or association shall not operate to impair or delay the right of any other person, firm, or corporation." ³⁷¹ "A plea that any domestic corporation or foreign corporation, joint stock company, or association has not paid any tax or fee required by any law of this state, and which is then due and payable, may be interposed at any time before trial upon the merits in any action, suit, or proceeding, and if issue be joined upon such plea, the same shall be first tried. Such plea cannot be made at any time by the delinquent corporation, joint stock company, or association." ³⁷²

Any foreign corporation which is permitted to carry on business in the State "may acquire, hold, use and dispose of in the corporate name all real estate necessary or convenient to carry into effect the object of the incorporation and the transaction of its business, and also any interest in real estate by mortgage or otherwise, as security for moneys due to or loans made by such corporation." ³⁷³

Nothing in the statutes shall be construed to give a foreign corporation any other or further rights, powers or privileges than may be acquired or exercised by domestic corporations. ³⁷⁴

Foreign insurance companies, express and brokerage companies, deposit fifty thousand dollars with the State Treasurer before doing business; and any one acting as agent for such a corporation which has not made the deposit is subject to a fine of not more than one thousand dollars or imprisonment for not more than one year or both. ³⁷⁵ A power of attorney shall be

³⁷¹ *Ibid.* § 9.

³⁷² *Ibid.* § 10.

³⁷³ Ore. Misc. L. § 2988.

³⁷⁴ *Ibid.* § 3294.

³⁷⁵ *Ibid.* § 3272.

recorded in each county in which the corporation has a resident agent, appointing a person to receive service of process.³⁷⁶ Surety companies are subject to the same regulations.³⁷⁷

Foreign railroad, water and gas companies must file an agreement not to sue in or remove a suit to the Federal courts.³⁷⁸

No corporation is subject to the jurisdiction of a court of this State unless it appear in the court, or have been created by or under the laws of this State, or have an agency established therein for the transaction of some portion of its business, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached.³⁷⁹ Service of process may be made by publication upon a foreign corporation which has property within the State, or on a cause of action which arose within the State, if process cannot otherwise be served.³⁸⁰ Where the plaintiff is a foreign corporation, its attorney is liable to the defendant for costs unless he files security for costs.³⁸¹

§ 180. Pennsylvania.

The constitution provides that "no foreign corporation shall do any business in this State without having one or more known places of business and an authorized agent or agents in the same upon whom process may be served."³⁸² It shall not be lawful for such a corporation to do business in the Commonwealth until it files with the Secretary of the Commonwealth a statement showing the title and object of the corporation, the location of its office or offices, and the name or names of its authorized agent or agents therein. A certificate of the Secretary of the filing of such statement shall be

³⁷⁶ *Ibid.* §§ 3276, 3277.

³⁷⁷ *Ibid.* §§ 3279-3282.

³⁷⁸ *Ibid.* § 3293.

³⁷⁹ Ore. Co. Civ. Pro. § 516.

³⁸⁰ *Ibid.* § 56.

³⁸¹ *Ibid.* § 566.

³⁸² Pa. Const. Art. 16, § 5; 1874, P. L. 108, § 1.

preserved for public inspection by each agent in each office.³⁸³ Any person or persons, agent, officer, or employee of any such foreign corporation, who shall transact any business within this Commonwealth for any such foreign corporation, without the provisions of this act being complied with, shall be guilty of misdemeanor, and punished by imprisonment for not more than thirty days and fine of not more than one thousand dollars or either.³⁸⁴

"No corporation other than such as shall have been incorporated under the laws of this state, nor any foreign government, potentate, or power, shall hereafter acquire and hold any real estate within this commonwealth directly in the corporate name, or by or through any trustee or other device whatsoever, unless specially authorized to hold such property by the laws of the commonwealth."³⁸⁵ Any property acquired and held in violation of this act shall escheat to the Commonwealth.³⁸⁶ "It shall and may be lawful for any company incorporated under the laws of any other state for the manufacture of any form of iron, steel, or glass, lumber or wood, or for the conversion, dyeing, and cleansing of cotton and other fabrics, or the manufacture of cotton or velvet, or other fabrics, or for the manufacture of pyroligneous acids, acetate of lime, and charcoal by the process of destructive distillation, or the preparation of cattle hair for use, or the manufacture of carbon dioxide and magnesia and the products thereof, and compositions, articles, and apparatus from and in connection therewith, or for the manufacture of extracts out of wood, bark, leaves, and roots, or any other extract for tanning, cleansing, dyeing, or other purposes or for the manufacture or printing of wall paper, lithographs or prints, and mining and manufacture of any clay into brick tile and various

³⁸³ Pa. 1874, P. L. 108, § 2. If these are separate branches, each one must be registered. Wall Paper Company's Appeal, 15 Pa. Super. Ct. 407.

³⁸⁴ *Ibid.* § 3.

³⁸⁵ Pa. 1855, P. L. 328, § 5.

³⁸⁶ *Ibid.* § 9.

other articles and products produced from clay, and from clay and other substances mixed therewith, to erect and maintain buildings for such manufacturing purposes and for offices and salesrooms or either within this commonwealth, and to take, have, and hold real estate, not exceeding one hundred acres, necessary and proper for such manufacturing purposes, and for offices, dwellings and salesroom, or either, and to mortgage, bond, lease or convey the same or any part thereof; provided, that nothing herein contained shall be deemed to prevent or relieve any real estate taken and held by any such foreign corporation under the provisions of this statute from being taxed in like manner with other real estate within this Commonwealth." It is also provided that such foreign corporation shall employ no greater amount of capital in the State than domestic corporations can do, and that they shall be taxed and make returns for taxation like domestic corporations.³⁸⁷ Similar provisions allow landholding by foreign corporations for the manufacture of any form of iron, steel or glass, or for the quarrying of slate, granite, stone, or rocks of any kind, or for dressing, polishing or manufacturing the same, or any of them; or any mineral springs company incorporated for the purpose of bottling and selling natural mineral spring water, or any company incorporated for the purpose of manufacturing, supplying and sale of ice;³⁸⁸ by foreign corporations engaged in the State in the publication and sale of books, tracts, newspapers, periodicals and such other business as is commonly connected with publishing and bookselling, the net profits of which are by its charter or governing body required to be applied to religious and charitable uses;³⁸⁹ foreign corporations for the transportation of passengers and freight by steamboats or other vessels upon or over any river or waters between this State and any other State;³⁹⁰ foreign ferry

³⁸⁷ Pa. 1893, P. L. 389, § 1.

³⁸⁸ Pa. 1901, P. L. 86.

³⁸⁹ Pa. 1895, P. L. 238.

³⁹⁰ Pa. 1889, P. L. 35.

and bridge companies, the ferry or bridge being upon or over any river between this and any other State;³⁹¹ and foreign insurance companies.³⁹² Any foreign corporation having a place of business and agent in the State may purchase at judicial sale any real estate upon which it may hold any mortgage, judgment or lien; but it must convey it within fifteen years.³⁹³ If a corporation which holds real estate in violation of the foregoing provisions conveys it to any citizen of the United States or corporation authorized to hold real estate before any inquisition taken by the corporation to escheat it, the grantee shall hold an indefeasible title.³⁹⁴

"Corporations of other states, doing business in this state, and in which three or more of the stockholders are citizens of this state, may become corporations of this state by preparing a certificate stating its name, purpose, and place of business, term for which it is to exist, names and residences and number of shares of stockholders, names and residences of directors, amount of stock and number and par value of shares, the legislation under which it was originally created, and its financial condition, showing stock paid in, funded and floating debt, the value of property, and cash assets. Said certificate must be accompanied by a certificate under the corporate seal showing the consent of a majority in interest to such application for a charter, and to a renunciation of its original charter of all privileges not enjoyed by corporations of its class under the laws of this state."³⁹⁵ The certificate is to be examined by the Governor, and on his approval letters patent shall issue. These shall be recorded with the Secretary of State and in the office for recording deeds in the county where the chief operations are carried on.³⁹⁶ From the date of the letters patent the corporation exists as a domestic corporation, with all the

³⁹¹ Pa. 1887, P. L. 352.

³⁹² Pa. 1881, P. L. 38.

³⁹³ Pa. 1887, P. L. 176, § 1; 1897, P. L. 136.

³⁹⁴ Pa. 1895, P. L. 264.

³⁹⁵ Pa. 1881, P. L. 89, § 1.

³⁹⁶ *Ibid.* § 2.

powers and rights of the original corporation. All claims on the corporation at the date of its new charter may be prosecuted under the laws governing the corporation prior to its new charter, and may be collected from the new chartered corporation as fully as if no change had taken place.³⁹⁷

No person shall act as agent of a foreign insurance company until it has complied with the provisions of law and received a certificate of authority.³⁹⁸ Every foreign insurance company must file an annual statement with the Insurance Commissioner, showing the condition of its business done in the United States. No company which neglects to file its statement shall do business while the neglect continues, and it shall forfeit one hundred dollars a day.³⁹⁹ For transacting business in the State without a certificate of authority the company shall forfeit five hundred dollars a month, and an agent who does business for the corporation shall be subject to fine of one hundred to one thousand dollars, and for a second offense the same fine and imprisonment not exceeding one year, or either.⁴⁰⁰ No insurance company shall do business without a capital stock or surplus of two hundred thousand dollars.⁴⁰¹

Foreign building and loan associations before doing business in the State must obtain a certificate from the Commissioner of Banking.⁴⁰² Foreign natural gas companies authorized to do business in the State may exercise the right of eminent domain.⁴⁰³ Foreign surety companies may do business in the State and be guarantors on public bonds if they have an unimpaired paid-up capital of two hundred and fifty thousand dollars, one hundred thousand invested as a reserve fund, liabilities not exceeding its assets; and it shall file applications

³⁹⁷ *Ibid.* § 3.

³⁹⁸ Pa. 1873, P. L. 20, § 10.

³⁹⁹ Pa. 1885, P. L. 134.

⁴⁰⁰ Pa. 1887, P. L. 62.

⁴⁰¹ Pa. 1876, P. L. 53, § 40.

⁴⁰² Pa. 1901, P. L. 153, § 3.

⁴⁰³ Pa. 1885, P. L. 33, § 10; *In re Ohio Valley Gas Co.*, 6 Pa. Dist. R. 200.

and reports with the Insurance Commissioner and obtain his certificate for doing business.⁴⁰⁴

Suits against foreign corporations may be served upon any officer, agent, or engineer, or by leaving a certified copy at the office or usual place of business.⁴⁰⁵ Suit may be begun against the corporation in any county in which it has an agency or transacts business, and the writ may be served on the president, cashier, agent, chief or any other clerk or upon any directors or agents of such corporation within the county.⁴⁰⁶ Foreign insurance companies must file with the Insurance Commissioner a stipulation accepting service of process on a person specified by the company as agent to receive service, or on the Insurance Commissioner or the party designated by him. After the company ceases to do business in the State process may still be served on the Commissioner so long as any liability to any resident of the State continues.⁴⁰⁷ Foreign beneficial associations must appoint the Insurance Commissioner to receive service of process, and the authority continues so long as any liability remains outstanding in the State.⁴⁰⁸ A writ of foreign attachment may be issued against any foreign corporation.⁴⁰⁹ "In all suits or actions hereafter to be brought in any court of record of this commonwealth against any foreign corporation or body corporate, not holding its charter under the laws of this commonwealth, every judgment, verdict, or award rendered against such corporation shall be final and conclusive, unless the said defendants, in addition to the usual proceedings in cases of appeal, shall give good and sufficient bail . . . for the payment of such sum or sums as shall finally be adjudged to be due to the plaintiff or plaintiffs, together with interest and costs thereon."⁴¹⁰

⁴⁰⁴ Pa. 1895, P. L. 343, § 2.

⁴⁰⁵ Pa. 1849, P. L. 216, § 3.

⁴⁰⁶ Pa. 1851, P. L. 345, § 6.

⁴⁰⁷ Pa. 1883, P. L. 134.

⁴⁰⁸ Pa. 1895, P. L. 280, § 1.

⁴⁰⁹ Pa. 1836, P. L. 568, § 76.

⁴¹⁰ Pa. 1849, P. L. 216, § 3.

§ 181. **Rhode Island.**

“No corporation, unless incorporated by the general assembly of this state, or under general law of this state, excepting national banking associations or other corporations existing under the laws or by the authority of the United States, shall carry on within this state the business for which it was incorporated, or enforce in the courts of this state any contract made within this state, unless it shall have complied with the following sections of this chapter.⁴¹¹ Every such foreign corporation shall appoint by written power some competent person resident in this state as its attorney, with authority to accept service of all process against such corporation in this state, and upon whom all process, including the process of garnishment, against such corporation in this state may be served, and who, in case of garnishment, when the fees therefor shall have been paid or tendered, shall make the affidavit required by law in such cases, and who shall cause an appearance to be entered in like manner as if such corporation had existed and been duly served with process within this state.⁴¹² A copy of such power of attorney, duly certified and authenticated, shall be filed with the secretary of state; and copies thereof, duly certified, shall be received in evidence in all courts of this state.⁴¹³ If such attorney shall die or resign or be removed, such corporation shall make a new appointment as aforesaid and file a copy with the said secretary of state as above prescribed, so that at all times there shall be within this state an attorney authorized to accept service of process and to enter an appearance as aforesaid; and no such power of attorney shall be revoked until after a like power shall have been given to some other competent person resident in this state, and a copy thereof filed as aforesaid.⁴¹⁴ Service of process upon such attorney shall be deemed sufficient service

⁴¹¹ R. I. Gen. L. ch. 253, § 36; 1902, ch. 980.

⁴¹² R. I. Gen. L. ch. 253, § 37.

⁴¹³ *Ibid.* § 38.

⁴¹⁴ *Ibid.* § 39.

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upon his principal.⁴¹⁵ No person shall act within this state, as agent or officer of any such foreign corporation, unless such corporation shall have appointed an attorney as hereinbefore provided, and every person so acting shall be fined one thousand dollars.⁴¹⁶ The preceding six sections shall not be held to apply to foreign insurance companies doing business in this state," but such companies shall continue to be governed by special provisions.⁴¹⁷

§ 182. South Carolina.

"Foreign corporations duly incorporated under the laws of any State of the United States or of any foreign country in treaty and amity with the said United States are hereby permitted to locate and carry on business within the State of South Carolina in like manner as the natural born citizens of the States of the United States or of such foreign country might do under the law existing at the time, subject nevertheless to the terms and conditions in this chapter hereafter set forth."⁴¹⁸ Within sixty days after acquiring any property or commencing to do business in the State the foreign corporation shall file a written stipulation with the Secretary of State, designating some place within the State as the principal place of business within the State, at which all legal papers may be served by delivering them to any officer, agent or employee of the corporation found there; or if none such be found, then by leaving the same on the premises. Such service shall have the same force and effect as service upon citizens of the State found within its limits.⁴¹⁹ The foreign corporation shall also file with the Secretary of State copies of its charter and by-laws and all amendments when made; and an annual statement showing the residence and post-office address of the corporation, the amount of capital stock actually paid and

⁴¹⁵ *Ibid.* § 40.

⁴¹⁶ *Ibid.* § 41.

⁴¹⁷ *Ibid.* § 42.

⁴¹⁸ S. Car. Civ. Code, § 1779.

⁴¹⁹ *Ibid.* § 1780.

the names and addresses of the President, Secretary and Directors.⁴²⁰ On failure to file any of the required papers the corporation is liable to indictment and fine not exceeding five hundred dollars, and is prohibited from carrying on business in the State until compliance and payment of fine.⁴²¹

It shall further be condition precedent to the right of any foreign corporation to do business in the State that all suits arising out of the dealings of such corporation with any citizen or corporation of the State commenced in the courts of the State shall be tried therein;⁴²² and this shall be a term of all contracts between such parties, and deemed of the essence.⁴²³

"It shall be a further condition precedent to the right of any such corporation to do business in this State, that it shall be taken and deemed to be the fact, irrebuttable, and part and parcel of all contracts entered into between such corporation and a citizen or corporation of this State, that the taking or receiving from any citizen or corporation of this State, of any charge, fee, payment, toll, impost, premium or other moneyed or valuable consideration, under or in performance of any such contract, or of any condition of the same, shall constitute the doing of its corporate business within this State, and that the place of the making and of performance of such contract shall be deemed and held to be within this State, anything contained in such contract or any rules or by-laws of such corporation to the contrary notwithstanding." ⁴²⁴

"All such corporations hereafter doing business in this State, as defined in this chapter, shall be deemed and held to be doing such business under and in pursuance of the terms and conditions of this chapter, and such terms and conditions shall be deemed and taken in all courts of this State to be a part and parcel of all contracts hereafter entered into between

⁴²⁰ *Ibid.* § 1781.

⁴²¹ *Ibid.* § 1783.

⁴²² *Ibid.* § 1784.

⁴²³ *Ibid.* §§ 1785, 1786.

⁴²⁴ *Ibid.* § 1787.

such corporations and a citizen or corporation of this State, anything contained in any such contract or in any rules or by-laws of such corporation to the contrary notwithstanding." ⁴²⁵

Every such corporation shall be subject to the laws of the State like domestic corporations; but shall not exercise any franchise or enjoy any privilege or immunity other than the right to own property and carry on business like individuals of the same State. ⁴²⁶

No alien or corporation controlled by aliens either in his or its own right or as trustee, *cestui que trust* or agent, shall own or control, within the limits of this State, more than five hundred acres of land; *provided*, this section shall not apply to land purchased under proceedings either by action or power of sale to foreclose any mortgage hereafter acquired by any alien or corporation controlled by aliens purchasing the same, but in such case such alien or corporation controlled by aliens shall not be entitled to hold said excess of land more than five years, without sale of same, unless the Comptroller General shall certify that a sale during that time would be materially detrimental to the interest of such alien or corporation controlled by aliens, in which case the said alien or corporation controlled by aliens may hold the land for five years longer upon the same condition. ⁴²⁷

No foreign railroad company shall carry on business, own property, or exercise any corporate franchise within the State until it has become incorporated under the general laws of the State; and at least one of the corporators shall be a resident of the State. ⁴²⁸

Foreign insurance companies must deposit in some State one hundred thousand dollars, for the benefit of all policy-holders, or must deposit ten thousand dollars in South Carolina

⁴²⁵ *Ibid.* § 1788.

⁴²⁶ *Ibid.* § 1790. This does not exempt the property of such corporations from attachment: *Williamson v. Eastern B. & L. Assoc.*, 54 S. C. 582, 32 S. E 766, 71 A. S. R. 822.

⁴²⁷ S. Car. Civ. Code, § 1795.

⁴²⁸ S. Car. 1902, ch. 569.

on which any judgment obtained shall be a lien.⁴²⁹ Every foreign insurance company and bank (except national banks) shall before doing business pay an annual license fee of one hundred dollars and appoint a resident agent on whom process may be served.⁴³⁰ Before obtaining the license the company must file a statement of condition, which must be renewed annually.⁴³¹ All policies are to be issued through resident agents.⁴³² Penalty for violation by a foreign corporation is five hundred dollars fine.⁴³³

An action against a foreign corporation may be brought by a resident of South Carolina, for any cause of action; by a non-resident when the cause of action shall have arisen or the subject of the action shall be situated within the State.⁴³⁴ Service may be made on a foreign corporation only when it has property within the State, or the cause of action arose therein, or where service can be made in the State personally upon the president, cashier, treasurer, attorney or secretary, or any agent thereof.⁴³⁵ Where no personal service can be made, service by publication is allowed in case the foreign corporation has property in the State, or the cause of action arose there.⁴³⁶ A plaintiff is entitled to an attachment against the property of a foreign corporation.⁴³⁷

§ 183. South Dakota.

No foreign corporation shall transact business within the

⁴²⁹ S. Car. Civ. Code, § 1796.

⁴³⁰ *Ibid.* § 1800.

⁴³¹ *Ibid.* §§ 1801, 1802.

⁴³² *Ibid.* § 1811.

⁴³³ *Ibid.* § 1814.

⁴³⁴ S. Car. Co. Civ. Pro. § 423. In no other cases have the State courts jurisdiction. *Central R. R. v. Georgia, C. & I. Co.*, 32 S. C. 319. But the lack of jurisdiction must be set up by the defendant. *Pollock v. B. & L. Assoc.*, 48 S. C. 65, 25 S. E. 977, 59 A. S. R. 695; and if the defendant does not plead to the jurisdiction he submits. *Chafee v. Postal T. Co.*, 35 S. C. 372.

⁴³⁵ *Ibid.* § 155.

⁴³⁶ *Ibid.* § 156.

⁴³⁷ *Ibid.* § 248.

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State or acquire, hold and dispose of property or sue in any State court until it has filed a copy of its charter or articles of incorporation with the Secretary of State.⁴³⁸ The corporation shall appoint an agent who shall reside at some accessible point in this State, duly authorized to accept service of process, and process served on him shall be due service on the corporation. A duly authenticated copy of the appointment of the agent shall be filed with the Secretary of State, and with the register of deeds of the county where the agent resides, and a certified copy shall be conclusive evidence of the appointment and authority of the agent. No suit shall be brought on any contract made by the corporation within the State unless the corporation has complied with the act. Any person acting within the State as agent of a foreign corporation which has not complied with the act shall be punished by fine of from ten to one hundred dollars, imprisonment ten to thirty days, or both.⁴³⁹

Suit may be begun by attachment against any foreign corporation which has not complied with the laws of the State for appointing an agent, or is removing or has assigned its property with intent to defraud creditors.⁴⁴⁰

§ 184. Tennessee.

Foreign corporations desiring to do any kind of business in this State may become incorporated in this State and carry on their authorized business here.⁴⁴¹ A copy of the charter or articles of incorporation must be filed with the Secretary of State, and an abstract of the same with the register of each county in which the corporation proposes to carry on business.⁴⁴² Such corporations shall be deemed and taken to be corporations of this State, and shall be subject to the jurisdictions of the courts of this State, and may sue and be sued

⁴³⁸ S. Dak. Civ. Code, § 4369.

⁴³⁹ *Ibid.* § 4371.

⁴⁴⁰ *Ibid.* § 6199.

⁴⁴¹ Tenn. Code, § 1992, as amended 1891, ch. 122, § 4.

⁴⁴² *Ibid.* § 1993.

therein in the mode and manner that is, or may be, by law directed in the case of corporations created or organized under the laws of this State.⁴⁴³

Such corporations may purchase, acquire and hold real estate in fee, or any other interest less than the fee, and personal property of every kind, as they may deem necessary or suitable for the carrying on of the business specified in the charter, and may sell, lease and convey such real estate as natural persons may do.

“And the state of Tennessee does hereby release its right of escheat by virtue of the alien origin of such corporations, or the alienage or non-residence of the shareholders of such corporations, or any of them.”⁴⁴⁴ “The corporations, and the property of all corporations coming under the provisions of this article, shall be liable for all the debts, liabilities, and engagements of said corporations, to be enforced in the manner provided by law for the application of the property of natural persons to the payments of their debts, engagements, and contracts;⁴⁴⁵ nevertheless, the creditors who may be residents of this state shall have a priority in the distribution of assets, or subjection of the same or any part thereof to the payment of debts, over all simple contract creditors being residents of any other country or countries, and also over mortgage or judgment creditors, for all debts, engagements, and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. But all such mortgages and judgments shall be valid, and shall constitute a prior lien on the property on which they are or may be charged, as against all debts which may be incurred subsequent to the date of their registration or rendition.”⁴⁴⁶ “Such of said corpora-

⁴⁴³ *Ibid.* § 1994.

⁴⁴⁴ *Ibid.* § 1995.

⁴⁴⁵ *Ibid.* § 1996.

⁴⁴⁶ *Ibid.* § 1997. This section is unconstitutional as to creditors who are citizens of other States of the Union; but is valid as to foreign corpo-

tions as shall engage in the mining of coals, iron ore, or other minerals, and in the manufacture of iron and other metals, shall have the right to construct and maintain roads, bridges, canals, tramways, telegraph lines, and railroads between their mines and their places of manufacture, and for purposes of inlet or outlet to or from any railroad now or hereafter to be constructed, or to any river or waterway at the point or place most convenient for its operation and its business; and for this purpose such corporation may purchase or acquire the necessary rights of way by contract with the owner or owners of the said lands on which the right of way is desired.⁴⁴⁷

"All corporations coming under these provisions shall, in good faith and truly, within one year after filing with the secretary of state the certified copy of the charter or articles of association as hereinbefore provided, begin and proceed with the business described in the said charter or articles of association so filed, and shall in good faith continue the same under the powers of said corporation in this said charter or articles of association as in this article declared; it being a chief object of this article to secure the opening and development of the mineral resources of the state, and to facilitate the introduction of foreign capital; and upon the failure of any such corporation to commence in good faith to develop and work some portion of its property within this state within one year after filing its said charter or articles or association in the office of the secretary of state, all rights and privileges conferred by this article shall lapse and become void and of no effect.⁴⁴⁸ Any corporation obtaining and having these privileges, may establish towns, villages, or settlements for the use and residence of its employees and others, on any lands acquired by it, and until the population is sufficiently large for the formation of municipal corporations in any of such towns

rations and citizens of foreign countries who are creditors. *Blake v. McClung*, 172 U. S. 239, 43 L. ed. 432.

⁴⁴⁷ *Ibid.* § 1999.

⁴⁴⁸ *Ibid.* § 2000.

or villages may establish such regulations for the government thereof as shall not be inconsistent with the laws of this state.⁴⁴⁹ If any such charter or articles of association, or any part thereof, filed as aforesaid in the office of the secretary of state, should be in contravention or violation of the laws of this state, all such parts thereof as may be found to be in conflict with the laws of this state shall be null and void.”⁴⁵⁰

Every foreign corporation desiring to own property or carry on business in the State must file a copy of the charter.⁴⁵¹ For doing or attempting to do business without complying with this provision subjects the offender to a fine of from one hundred to five hundred dollars, fixed by the jury.⁴⁵² On compliance the corporation may sue and be sued, and shall be subject to the jurisdiction of the State as fully as if it were a domestic corporation, provided this shall not affect any contracts or remedy heretofore made by foreign corporations before compliance.⁴⁵³ If the corporation has no agent in the State on whom process may be served, a plaintiff, on affidavit of the justice of his claim and that the defendant is a corporation organized under this act and has no agent, may attach any property owned by the corporation and serve by publication.⁴⁵⁴ This is an extension, not a repeal, of the earlier provisions for full reincorporation of foreign corporations in Tennessee.⁴⁵⁵

“Any corporation claiming existence under the laws of any other state, or of any country foreign to the United States, found doing business in this state, shall be subject to suit here to the same extent that corporations of this state are by the

⁴⁴⁹ *Ibid.* § 2001.

⁴⁵⁰ *Ibid.* § 2003.

⁴⁵¹ Tenn. 1891, ch. 122, § 2, as amended 1895, ch. 81. See *Nichols & S. Co. v. Loyd*, 76 S. W. 911.

⁴⁵² *Ibid.* § 3.

⁴⁵³ *Ibid.* § 4.

⁴⁵⁴ *Ibid.* § 5.

⁴⁵⁵ *Ibid.* § 6. This act applies to fire insurance companies. *S. v. Phoenix F. I. Co.*, 92 Tenn. 420, 21 S. W. 893.

laws thereof liable to be sued, so far as relates to any transaction had in whole or in part within this state, or any cause of action arising here, but not otherwise.”⁴⁵⁶

“Any corporation having any transaction with persons or having any transaction concerning any property situated in this state, through any agency whatever acting for it within the state, shall be held to be doing business here within the meaning of this act.”⁴⁵⁷

Process may be served upon any agent of said corporation found within the county where the suit is brought, no matter what character of agent; and in the absence of such an agent it shall be sufficient to serve the process upon any person, if found within the county where the suit is brought, who represented the corporation at the time the transaction out of which the suit arises took place, or if the agency through which the transaction was had be itself a corporation, then upon that corporation.⁴⁵⁸ This act does not affect corporations which have a resident local agent.⁴⁵⁹

As a result of these provisions, Tennessee makes provision for three classes of foreign corporations: 1. Those reincorporated in Tennessee; 2. Those authorized to do business there; 3. Other corporations which may be sued there.

§ 185. Texas.

“Hereafter, any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other State, or of any Territory of the United States, or of any municipality of such State or Territory, or of any foreign government, sovereignty or municipality, desiring to transact business in this State, or solicit business in this State, or establish a general or special office in this State, shall be and the same is hereby required to file with the Secretary of State

⁴⁵⁶ Tenn. 1887, ch. 226, § 1.

⁴⁵⁷ *Ibid.* § 2.

⁴⁵⁸ *Ibid.* § 3.

⁴⁵⁹ *Cumberland T. & T. Co. v. Turner*, 88 Tenn. 265, 12 S. W. 544.

a duly certified copy of its articles of incorporation, and thereupon the Secretary of State shall issue to such corporation a permit to transact business in this State. If such corporation is created for more than one purpose, the permit may be limited to one or more purposes; and such corporation on obtaining such permit shall have and enjoy all the rights and privileges conferred by the laws of this State on corporations organized under the laws of this State, and shall be authorized and empowered to hold, purchase, sell, mortgage, or otherwise convey such real estate and personal estate as the purposes of such corporation may require, and also to take, hold and convey such other property, real, personal or mixed, as may be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or which may become due, or belonging to the corporation; provided, that if such corporation so obtaining a permit to do business in this State, shall acquire any real estate under the powers herein conferred, it shall alienate all real property so acquired by it not necessary for the purposes of such corporation, within fifteen years from the time of acquisition; and provided further, that such corporation shall alienate all real estate acquired by it for the purposes of such corporation, within fifteen years from the expiration of the time for which the permit is issued, or if such permit be renewed, or such corporation be otherwise authorized to carry on business in this State, then such corporation shall alienate such real estate within fifteen years after the expiration of the time for which such permit is extended, or it is so authorized to carry on business in this State; and provided further, that if such corporation shall cease to carry on business in this State, that it shall alienate all such real estate so acquired by it, within fifteen years after the time it shall so cease to carry on business in this State.⁴⁰⁰ No such corporation can maintain any suit or action, either legal or equitable, in any of the courts of this

⁴⁰⁰ Tex. Rev. Stat. Art. 745; 1897, ch. 119.

State, upon any demand, whether arising out of contract or tort, unless at the time such contract was made or tort committed the corporation had filed its articles of incorporation under the provisions of this chapter in the office of the Secretary of State for the purpose of procuring its permit.⁴⁶¹ The provisions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating, or maintaining any railway, or to such corporations as are required by law to procure permits to do business from the Commissioner of Agriculture, Insurance, Statistics and History.⁴⁶² No permit shall be issued for a longer period than ten years from the date of filing such articles of incorporation in the office of the Secretary of State.⁴⁶³ Either the original permit or certified copies thereof by the Secretary of State shall be evidence of the compliance on the part of any corporation with the terms of this chapter. A certificate of the Secretary of State to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this chapter."⁴⁶⁴

The purposes for which a permit is granted a foreign corporation will be limited to those authorized by Texas statutes for domestic corporations; and will also be limited to the purposes named in some one subdivision of the Article in which is enumerated the purposes for which corporations may be formed in Texas.⁴⁶⁵ Every foreign corporation violating the provisions of the anti-trust act is denied the right and prohibited from doing business in the State.⁴⁶⁶ No permit to do business in the State shall be granted to any foreign mutual fire, storm or lightning insurance company without authorized capital.⁴⁶⁷

⁴⁶¹ Tex. Rev. Stat. Art. 746.

⁴⁶² *Ibid.* Art. 747.

⁴⁶³ *Ibid.* Art. 748.

⁴⁶⁴ *Ibid.* Art. 749.

⁴⁶⁵ Tex. Corp. Supp. p. 23, note.

⁴⁶⁶ Tex. Rev. Stat. Art. 5316.

⁴⁶⁷ *Ibid.* Art. 642, cl. 50.

a duly certified copy of its articles of incorporation, and thereupon the Secretary of State shall issue to such corporation a permit to transact business in this State. If such corporation is created for more than one purpose, the permit may be limited to one or more purposes; and such corporation on obtaining such permit shall have and enjoy all the rights and privileges conferred by the laws of this State on corporations organized under the laws of this State, and shall be authorized and empowered to hold, purchase, sell, mortgage, or otherwise convey such real estate and personal estate as the purposes of such corporation may require, and also to take, hold and convey such other property, real, personal or mixed, as may be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or which may become due, or belonging to the corporation; provided, that if such corporation so obtaining a permit to do business in this State, shall acquire any real estate under the powers herein conferred, it shall alienate all real property so acquired by it not necessary for the purposes of such corporation, within fifteen years from the time of acquisition; and provided further, that such corporation shall alienate all real estate acquired by it for the purposes of such corporation, within fifteen years from the expiration of the time for which the permit is issued, or if such permit be renewed, or such corporation be otherwise authorized to carry on business in this State, then such corporation shall alienate such real estate within fifteen years after the expiration of the time for which such permit is extended, or it is so authorized to carry on business in this State; and provided further, that if such corporation shall cease to carry on business in this State, that it shall alienate all such real estate so acquired by it, within fifteen years after the time it shall so cease to carry on business in this State.⁴⁰⁰ No such corporation can maintain any suit or action, either legal or equitable, in any of the courts of this

⁴⁰⁰ Tex. Rev. Stat. Art. 745; 1897, ch. 119.

State, upon any demand, whether arising out of contract or tort, unless at the time such contract was made or tort committed the corporation had filed its articles of incorporation under the provisions of this chapter in the office of the Secretary of State for the purpose of procuring its permit.⁴⁶¹ The provisions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating, or maintaining any railway, or to such corporations as are required by law to procure permits to do business from the Commissioner of Agriculture, Insurance, Statistics and History.⁴⁶² No permit shall be issued for a longer period than ten years from the date of filing such articles of incorporation in the office of the Secretary of State.⁴⁶³ Either the original permit or certified copies thereof by the Secretary of State shall be evidence of the compliance on the part of any corporation with the terms of this chapter. A certificate of the Secretary of State to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this chapter."⁴⁶⁴

The purposes for which a permit is granted a foreign corporation will be limited to those authorized by Texas statutes for domestic corporations; and will also be limited to the purposes named in some one subdivision of the Article in which is enumerated the purposes for which corporations may be formed in Texas.⁴⁶⁵ Every foreign corporation violating the provisions of the anti-trust act is denied the right and prohibited from doing business in the State.⁴⁶⁶ No permit to do business in the State shall be granted to any foreign mutual fire, storm or lightning insurance company without authorized capital.⁴⁶⁷

⁴⁶¹ Tex. Rev. Stat. Art. 746.

⁴⁶² *Ibid.* Art. 747.

⁴⁶³ *Ibid.* Art. 748.

⁴⁶⁴ *Ibid.* Art. 749.

⁴⁶⁵ Tex. Corp. Supp. p. 23, note.

⁴⁶⁶ Tex. Rev. Stat. Art. 5316.

⁴⁶⁷ *Ibid.* Art. 642, cl. 50.

A foreign corporation may be sued in any county where any part of the cause of action accrued, or where the company has a principal office or an agency, or when it has no agent in the State, where the plaintiff resides.⁴⁶⁸

In any suit against a foreign private or public corporation, joint stock company, or association, or acting corporation or association, citation or other process may be served on the president, vice-president, secretary, or treasurer, or general manager, or upon any local agent within this State.⁴⁶⁹

§ 186. Utah.

No corporations organized outside of this State shall be allowed to transact business within the State on conditions more favorable than those prescribed by law to similar corporations organized under the laws of this State.⁴⁷⁰ No corporation shall do business in this State without having one or more places of business with an authorized agent or agents, upon whom process may be served; nor without first filing a certified copy of its articles of incorporation with the Secretary of State.⁴⁷¹

“All corporations not organized under the laws of this state, before doing business within the state shall file with the secretary of state and with the county clerk of the county wherein their principal office in the state is situated, a certified copy of their articles of agreement, certificate of incorporation, and by-laws, and, in case of alteration or amendment of said articles of incorporation or by-laws, shall file certified copies of such alterations or amendments with each of said officers, and shall also, before doing business within the state, by resolution of their board of directors, accept the provisions of the constitution of this state, and also designate some person residing in the county in which its principal place of business in the

⁴⁶⁸ *Ibid.* Art. 1194, cl. 25.

⁴⁶⁹ *Ibid.* Art. 1223.

⁴⁷⁰ Ut. Const. Art. 12, § 6.

⁴⁷¹ *Ibid.* § 9.

state is situated, upon whom process issued by authority of or under any law of the state may be served. A copy of such resolutions shall be certified by the president and secretary, under the seal of the company, and filed in the office of the secretary of state and in the office of the county clerk of the county in which its principal office is situated.⁴⁷² Any such corporation failing to comply with the provisions of the foregoing section shall not be entitled to the benefits of the laws of this state relating to corporations; and any person acting as agent of a foreign corporation which shall neglect or refuse to comply with the foregoing provisions, shall be deemed guilty of a misdemeanor, and shall be personally liable on any and all contracts made in this state by him for and in behalf of such company during the time that it shall remain so in default; *provided*, that this section shall not be held to apply to persons acting as agents for foreign corporations for a special or temporary purpose or for a purpose not within the ordinary business of such corporations, nor shall it apply to attorneys-at-law as such."⁴⁷³ If no designated agent is found, process may be served on the managing agent.⁴⁷⁴

Foreign building and loan companies before doing business must get a certificate of authority from the Secretary of State. The company files a statement of condition. Upon receipt of such statement, the Secretary of State, if he believes that the association is properly managed, that its financial condition is satisfactory, and that its business is conducted upon a safe and reliable plan, shall issue a certificate of authority to such corporation.⁴⁷⁵ An annual statement of condition must be published.⁴⁷⁶

A foreign insurance company desiring to do business in Utah must appoint an attorney and file with the Secretary of

⁴⁷² Utah Rev. Stat. § 351.

⁴⁷³ *Ibid.* § 352.

⁴⁷⁴ *Ibid.* § 2948, cl. 5.

⁴⁷⁵ *Ibid.* § 397.

⁴⁷⁶ *Ibid.* § 398.

State written authority for him to accept service of process; it must also file a certified copy of its charter or articles, and a sworn statement of condition; and must show that if organized in a foreign county it has deposited at least two hundred thousand dollars in some of the United States for security of the assured in this country.⁴⁷⁷ The company and each agent must procure a certificate of authority before doing business.⁴⁷⁸ Any insurance company doing business before obtaining authority shall be fined one hundred dollars a day, but no more than one thousand dollars in all; every agent shall be fined twenty-five dollars a day, but no more than two hundred and fifty dollars in all.⁴⁷⁹ Policies written by foreign companies must be countersigned by a licensed local agent.⁴⁸⁰

Foreign railroad companies which have filed their articles with the Secretary of State are given the same right to take property belonging to the State as domestic companies.⁴⁸¹

§ 187. Vermont.

“No foreign corporation, except railroads and such corporations as are subject to the supervision and examination of the insurance commissioners and inspector of finance under the laws of this state, and which are by the provisions of this act required to pay to this state an annual license tax, shall do business herein without having first procured from the secretary of state a certificate that it has complied with all requirements of law to authorize it to do business in this state; and that the business of the corporation to be carried on in this state is such as may be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business. The secretary of state shall deliver such certificate to every such corporation so complying with the requirements

⁴⁷⁷ *Ibid.* § 409.

⁴⁷⁸ *Ibid.* § 410.

⁴⁷⁹ *Ibid.* § 411.

⁴⁸⁰ Utah, 1901, ch. 74, § 1.

⁴⁸¹ Utah Rev. Stat. § 439.

of the law upon receipt of the fees provided for in this act.”⁴⁸²
“No foreign corporation mentioned in the second [next] preceding section, doing business in this state subsequent to the last day of January, 1903, shall, except as provided in the preceding section, maintain any action in this state upon any contract made by it in this state, unless prior to the making of such contract, it shall have procured such certificate. This prohibition shall also apply to any assignee of such foreign corporation and to any person claiming under such assignee or such corporation or under either of them. No certificate of authority shall be granted to any foreign corporation having the same name as an existing domestic corporation.”⁴⁸³

“Every foreign corporation [doing business in this State] shall, before such certificate is granted, file in the office of the secretary of state, and in the office of the commissioner of state taxes a sworn copy in the English language of its charter or certificate of incorporation and a statement under its corporate seal, particularly setting forth the business of the corporation which it is engaged in carrying on or which it proposes to carry on within the state, and a place within the state which is to be its principal place of business, and designating a person residing in this state upon whom process against the corporation may be served within the state and to whom all notices relating to corporate taxation under the provisions of this act shall be given. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the state.”⁴⁸⁴
Such designation shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this state, or to whom the notices hereinbefore described shall be given. If the person so designated dies, or removes from the place where the corporation has its principal

⁴⁸² Vt. 1902, No. 20, § 59.

⁴⁸³ *Ibid.* § 61.

⁴⁸⁴ *Ibid.* § 62.

place of business within the state, and the corporation does not within thirty days after such death or removal, designate in like manner another person upon whom process against it may be served within the state, process against the corporation in an action upon any liability incurred within this state before such revocation, may after such death or removal and until another designation is made, be served upon the secretary of state." ⁴⁸⁵

§ 188. Virginia.

No foreign corporation shall be authorized to carry on, in this State, the business or to exercise any of the powers or functions of a public-service corporation, or be permitted to do anything which domestic corporations are prohibited from doing, or be relieved from compliance with any of the requirements made of similar domestic corporations by the constitution and laws of this State, where the same can be made applicable to such foreign corporation without discriminating against it. But this section shall not affect any public service corporation whose line or route extends across the boundary of this Commonwealth, nor prevent any foreign corporation from continuing in such lawful business as it may be actually engaged in within this State when this constitution goes into effect; but any such foreign public service corporation, so engaged, shall not without first becoming incorporated under the laws of this State, be authorized to acquire, lease, use or operate, within this State, any public or municipal franchise or franchises in addition to such as it may own, lease, use or operate when this constitution goes into effect. The property within this State of foreign corporations shall always be subject to attachment, the same as that of non-resident individuals; and nothing in this section shall restrict the power of the General Assembly to discriminate against foreign corporations whenever and in whatsoever respect it may deem wise or expedient. ⁴⁸⁶

⁴⁸⁵ *Ibid.* § 63.

⁴⁸⁶ Va. Const. § 163.

Every foreign corporation except insurance companies shall appoint an agent residing in the State to receive service of process. The power of attorney for this purpose with a copy of the charter shall be delivered to and recorded by the clerk of court of the place where the principal office of the company is located, and then filed with the Secretary of the Commonwealth. The agent shall be appointed and an office established before commencing business.⁴⁸⁷ If no such agent is appointed, service on any officer, agent or employee of the company shall be enough.⁴⁸⁸

Foreign corporations to manufacture iron, steel or other metals or articles made from metal, wood, cotton, or wool, or to mine coal or ores, may carry on business in this State, and for this purpose may purchase, acquire, lease, sell, mortgage and convey real estate in fee and any other interest in lands and personal property of any kind suitable for their business, and erect and operate all requisite furnaces, forges, mills, foundries, machinery, buildings, plants and appliances. Such corporation shall not acquire and hold more than ten thousand acres in any one county, except the counties of Tazewell, Russell and Buchanan.⁴⁸⁹

When a foreign railroad company operates a railroad in the State as purchaser or lessee or by reason of consolidation, such corporation shall *ipso facto* become a corporation of Virginia in respect to the works, property and franchises controlled or operated by it within the State, and shall as such be subject to the jurisdiction of the courts of the State, and in all respects governed and controlled by the laws of the State.⁴⁹⁰

§ 189. Washington.

“No corporation organized outside the limits of this State shall be allowed to transact business within the State on more

⁴⁸⁷ Va. Code, § 1104.

⁴⁸⁸ *Ibid.* § 1105.

⁴⁸⁹ Va. 1902, ch. 298.

⁴⁹⁰ Va. 1890, ch. 67.

favorable conditions than are prescribed by law to similar corporations organized under the laws of this State.”⁴⁹¹

“Any corporation incorporated under the laws of any state or territory in the United States, or of any foreign country, state or colony, for any of the purposes which domestic corporations are authorized to be formed under the laws of this state, shall have full power and is hereby authorized to sue and to be sued in any court having competent jurisdiction, to acquire, purchase, hold, mortgage, sell, convey, or otherwise dispose of, in the corporate name, all real estate or personal property necessary or convenient to carry into effect the objects and purposes of its corporation, and also any interest in real estate, by mortgage or otherwise due to or loans made by such foreign corporations within the boundaries of this state, either prior to or after the passage of this act, and generally do and perform every act and transact every kind of business within this state in the same manner and to the same extent as corporations incorporated and organized under the laws of this state are authorized to do under the laws of this state, by a compliance with all the conditions prescribed by the next two succeeding sections of this chapter: *Provided, however,* That this chapter shall not be (so) construed as to allow such foreign corporations to transact business within the state on more favorable conditions than are prescribed by law for a similar corporation organized under the laws of this state: *And provided further,* That no corporation, the majority of the capital stock of which is owned by aliens, other than those who in good faith have declared their intention to become citizens of the United States, shall acquire the ownership of any lands in this state other than lands containing valuable deposits of minerals, metals, iron, coal or fire-clay, and the necessary land for mills and machinery to be used in the development thereof, and the manufacture of the products therefrom, except where acquired under mortgage, or in good faith in the ordinary course of justice in the collection of debts: *Provided further,* That no foreign cor-

⁴⁹¹ Wash. Const. Art. 12, § 7.

poration which is hereafter organized which has among its other powers the business of dealing in real estate, and buying and selling the same, and for the purpose of carrying on a real estate brokerage business, shall be permitted to transact such business of buying and selling and dealing in real estate, and carrying on a brokerage business therein, in this state; but this prohibition shall not extend to any other business for the transaction of which such corporation may be organized.⁴⁹² Such corporation shall cause to be filed and recorded in the office of the Secretary of State a copy of its charter, articles of incorporation, memorandum of association, or certificate of incorporation, certified to by the officer who is the custodian of the same according to the laws of the state or territory, country or colony where such corporation is incorporated, or who is authorized to issue certificates of incorporation according to laws of such state or territory or foreign country or colony. The instruments herein required to be filed and recorded shall be attested by such certifying officer under his hand and seal of office, which attestation shall be *prima facie* proof of the facts herein stated, and the genuineness of the certificate. If such officer has no official seal, his certificate shall state that fact over his signature, and thereupon the Secretary of State or of the territory, in case of corporations within the United States, and the consul-general, consul, vice-consul, deputy consul, consular agent, or commercial agent of the United States, at or nearest to the place where such certificate is made, in the case of corporations not within the United States, shall certify under his hand and seal of office to the genuineness of the signature of the officer making the certificate, and to the fact that at the time of making such certificate the person making the same held the office described in the certificate.⁴⁹³

“Such corporations shall also constitute and appoint an agent, who shall reside at the place in the state where the principal business of the corporation is to be carried on, to be

⁴⁹² Wash. Gen. Stat. § 1524.

⁴⁹³ *Ibid.* § 1525.

designated as hereinafter required. Such appointment shall be in writing, signed by the president, or chief officer of such corporation, and shall be attested by its corporate seal, and shall contain the name of the agent, his place of residence, and the place where the principal business of such corporation is to be carried on, and shall authorize such agent to accept service of process in any action or suit pertaining to the property, business or transactions of such corporation within this state in which such corporation may be a party. The signature of such president or chief officer, attested by the corporate seal to such written appointment, shall be sufficient proof of the appointment of such agent. Such appointment when duly executed, shall be filed for record in the office of the Secretary of State by such corporation, and shall be there recorded, and such corporation shall have and keep continually some resident agent, empowered as aforesaid, during all the time such corporation shall conduct or carry on any business within this state, and service of any process, pleading, notice or other paper shall be taken and held as due service on such corporation. Such corporation may change its agent or its principal place of business from time to time by filing and recording with the Secretary of State a new appointment stating the change of such agent or the change in its principal place of business.”⁴⁹⁴ The penalty on a foreign corporation for doing business in the State before complying with the foregoing provisions is two hundred fifty dollars.⁴⁹⁵ “Any agent of any foreign corporation conducting or carrying on business within the limits of this state, for and in the name of such corporation, contrary to any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail for a term not exceeding three months, or by both such fine and imprisonment.”⁴⁹⁶

⁴⁹⁴ *Ibid.* § 1526.

⁴⁹⁵ Wash. 1899, p. 100.

⁴⁹⁶ Wash. Gen. Stat. § 1531.

"Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory, whose constructed railroad shall reach or intersect the boundary line of this state at any point, may extend its railroad into this state from any such point or points to any place or places within the state, and may build branches from any point on such extension. Before making such extension or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which such extension or branch is to be constructed, and the estimated length of such extension or branch, and the name of each county in this state through or into which it is constructed or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the Secretary of State, who shall endorse thereon the date of filing thereof, and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive such aid thereto as it would have had had it been authorized so to do by articles of incorporation duly filed in accordance with the laws of this state. All such railroad corporations, consolidated companies and their branches, including their stock, property and franchises, within the jurisdiction of this state, shall be subject to and controlled by the constitution and laws of this state." ⁴⁹⁷

Foreign fraternal beneficiary associations must file its charter with the Commissioner of Insurance, and appoint him attorney to receive service of process; and if the law of the State of charter does not provide for formal authorization of the corporation to do business it must be authorized by the Commissioner after an examination.⁴⁹⁸ Foreign building and loan associations file a copy of the charter and an appointment as attorney to receive service of process with the State Auditor;

⁴⁹⁷ Wash. 1890, p. 528, §§ 3, 4.

⁴⁹⁸ Wash. 1903, p. 357, § 3.

and they must have deposited a reserve fund of one hundred thousand dollars as security for members and creditors.⁴⁹⁹

§ 190. West Virginia.

A foreign corporation may hold property and transact business within the State upon complying with the provisions of this section and not otherwise. It shall have the same rights and privileges and be subject to the same regulations, restrictions and liabilities as a domestic corporation. It shall file with the Secretary of State a copy of its articles of association or certificate of incorporation. The Secretary of State shall issue his certificate, which (with a copy of the charter) shall be recorded in the office of the clerk of the county court in one of the counties where business is conducted.

Every railroad doing business under this section or under a Virginia charter is hereby declared to be, as to its works, property, operations, transactions, and business in this State, a domestic corporation, and shall be so held and treated in all suits and legal proceedings which may be commenced or carried on by or against any such railroad corporation, as well as in all other matters relating to such corporations.

No railroad or other corporation which has corporate authority from any other State shall do business in this State as lessee of the works, property or franchises, of any other corporation or person, or maintain suit until in addition to other requirements it shall file with the Secretary of State a written acceptance of the provisions of this section and agreement to be governed thereby, and failure to do so may be pleaded in abatement of any such suit; but this shall not lessen the corporation's liability upon any contract or for any wrong.

A corporation doing business in the State without complying with the provisions of this section shall be fined five hundred to five thousand dollars for each month.⁵⁰⁰

⁴⁹⁹ Wash. 1890, p. 59, §§ 8, 9.

⁵⁰⁰ W. Va. Code, ch. 54, § 30, amended 1901, ch. 35.

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The property of a non-resident corporation may be attached in any suit.⁵⁰¹

§ 191. Wisconsin.

"No corporation, joint stock company or express company incorporated or organized otherwise than under the laws of this state, except corporations or associations created solely for religious or charitable purposes, insurance companies and fraternal or beneficiary corporations, societies, orders and associations furnishing life or casualty insurance or indemnity upon the mutual or assessment plan, shall transact business or acquire, hold or dispose of property in this state until such association, company or corporation shall have caused to be filed in the office of the secretary of state a duly authenticated copy of its charter, articles of association or incorporation, and all amendments thereto which may be made while it shall continue to do business therein.⁵⁰² Such association, company or corporation causing a copy of its charter or articles to be so filed shall thereby be deemed to have made, constituted and appointed the secretary of state its true and lawful attorney upon whom all summonses, notices, pleadings or process in any action or proceeding against it may be served in respect to any liability arising out of any business, contract or transaction in this state, and thereby to have stipulated that service thereof upon the secretary of state or his assistant shall be accepted irrevocably as a valid service upon it; and such appointment and stipulation shall continue in force irrevocably so long as any liability of such association, company or corporation remains outstanding in this state. Actions may be brought against any such association in the name by which it is commonly known. Whenever any such summons, notice, pleading or process shall be so served the secretary of state shall forthwith mail a copy thereof, postage prepaid, and

⁵⁰¹ *Ibid.* ch. 106, § 1.

⁵⁰² This provision is prospective, and does not affect the right to continue to hold land acquired before the statute was passed. *Chicago T. & T. Co. v. Bashford*, (Wis.) 97 N. W. 940.

directed to such association, company or corporation at its principal place of business, or if it be organized in a foreign country then to its resident manager in the United States, and also an additional copy to such association, company or corporation at its foreign address, or in any such case to such other person as may have been previously designated by it by written notice or request filed in his office. The failure to comply with any of the provisions of this section shall, for such violation, subject the association, company or corporation or any agent, officer or person acting for it in this state to a penalty of five hundred dollars, to be sued for and recovered in the name of the state, with the costs of prosecution, by the district attorney of any county in which it or any of its agents or officers shall be located or reside or transact or attempt to transact any business; and such penalty, when recovered, shall be paid into the treasury of the county for the benefit of the school fund. Every contract made by or on behalf of any such association, company or corporation affecting the personal liability thereof or relating to property within this state, before it shall have complied with the provisions of this section, shall be wholly void on its behalf and on behalf of its assigns, but shall be enforceable against it or them. In case any joint-stock company or association shall not have any articles of incorporation, organization or association it shall file in the office of the secretary of state, under the seal, if any, of the company, and under the signature of two of its principal officers, a written instrument appointing the secretary of state an attorney for the purpose of receiving service of summons, notice, pleading and process as aforesaid, and stipulating that the service thereof shall constitute personal service upon it; and be subject to like penalties for failure to comply with this provision as hereinbefore provided in case of a failure to file such articles." Manufacturing companies which have complied with the special provisions applying to them are not required to make any further deposit of their articles.⁵⁰³

⁵⁰³ Wis Stat § 1770b.

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Foreign corporations shall also "make and file with the secretary of state, with the articles above provided for, a statement, duly sworn to, of the proportion of capital stock of said association, company or corporation which is represented in the state of Wisconsin by its property located and business transacted therein, and such association, company or corporation shall be required to pay into the office of the secretary of this state upon the proportion of its capital stock represented by its property and business in Wisconsin, one dollar for every one thousand dollars in its capital stock in excess of twenty-five thousand dollars, and in case of an increase of capital stock by amendment, one dollar for every one thousand dollars of said increase; provided that said payment in excess of twenty-five dollars, shall not be required from any corporation upon which a license fee is imposed under other sections of these statutes."⁵⁰⁴ "All foreign corporations and the officers and agents thereof doing business in this state, shall be subjected to all the liabilities and restrictions that are or may be imposed upon corporations of like character, organized under the laws of this state, and shall have no other or greater powers."⁵⁰⁵ The secretary of state shall, upon being satisfied that such foreign corporations, joint stock company, express company, has fully complied with the requirements of the preceding section, and all other provisions of law governing such corporations or associations, deliver to such corporation or association, as the case may be, a license to transact business in this state, which such license shall continue in force until revoked. And such license shall contain the conditions upon which such foreign corporation or association is permitted to do business in this state.⁵⁰⁶ No such foreign corporation or association, except such as have heretofore filed with the secretary of state copies of their articles of incorporation or association and have complied with the laws then in force,

⁵⁰⁴ Wis. 1901, ch. 399, § 1.

⁵⁰⁵ Wis. 1901, ch. 434.

⁵⁰⁶ Wis. 1901, ch. 399, § 2.

shall transact any business in this state without first having paid the license fee prescribed and obtained a license.”⁵⁰⁷

No corporation created in a foreign country, or more than twenty per cent. of whose stock is owned by non-resident aliens shall acquire, hold or own more than three hundred and twenty acres of land in this State or any interest therein except such as may be acquired by devise, inheritance, or in good faith in the course of justice in the collection of debts by due process of law. All lands acquired, held or owned in violation of the provisions hereof shall be forfeited to the State.⁵⁰⁸

“Every foreign corporation actually engaged in manufacturing within this state shall, within sixty days from the time of making a written request therefor by any resident creditor thereof, and annually thereafter upon a like request, file in the office of the secretary of state a statement showing the capital stock subscribed, the amount thereof actually paid in, the full name of each of its stockholders and the amount of stock held by each. Such request may be served by mail upon the president, secretary or other principal officer of said corporation or personally upon any officer or agent thereof who may be within this state. If any corporation shall fail to so file said report it shall forfeit all right to further carry on or transact business in this state and it shall be unlawful for it, or any person for it, to do or transact any business therein, and on such failure any person or agent who shall assume to act for or to transact any business for or on account of said corporation shall forfeit for each and every offense not less than twenty-five dollars nor more than one hundred dollars, which may be sued for in the name of the state by the district attorney of the county where such offense was committed, and the proceeds thereof, after deducting taxable costs, shall be paid into the school fund.”⁵⁰⁹

Foreign loan and building associations are required to de-

⁵⁰⁷ *Ibid.* § 3.

⁵⁰⁸ Wis. Rev. Stat. § 2200 a.

⁵⁰⁹ *Ibid.* § 1770 a.

posit with the State Treasurer for the security of all its members in the State, one hundred thousand dollars in approved securities;⁵¹⁰ to obtain a license from the Bank Examiner;⁵¹¹ and to file with the latter a copy of the charter and an appointment as attorney to receive service of process.⁵¹² Before issuing the license the examiner shall make an examination of the corporation.⁵¹³ No person shall act as agent for such association until he has procured a license to do so from the Bank Examiner.⁵¹⁴ "When, by the laws of any other state or territory, any taxes, fines, penalties, licenses, fees, deposits, money, securities or other obligations or prohibitions are imposed on building and loan associations of this state doing business in such other state or territory or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions, of whatever kind, shall be imposed upon all building and loan associations of such other state or territory doing business in this state and upon their agents here." ⁵¹⁵

A foreign corporation may sue and be sued like a domestic corporation. But it cannot maintain an action founded on any liability arising out of an act forbidden to a corporation or association of individuals to do, without express authority of law.⁵¹⁶ Suit may be brought against a foreign corporation even after it has ceased to act, and judgment satisfied out of any property of the corporation in the State, though in the hands of trustee or other person for the use of the corporation or its creditors.⁵¹⁷ Service of process on a foreign corporation may be upon any officer within the State, or any agent having charge of or conducting any business therefor in this State,

⁵¹⁰ *Ibid.* § 2014, cl. 17, 18.

⁵¹¹ *Ibid.* cl. 19.

⁵¹² *Ibid.* cl. 20.

⁵¹³ *Ibid.* cl. 23.

⁵¹⁴ *Ibid.* cl. 24.

⁵¹⁵ *Ibid.* cl. 21.

⁵¹⁶ *Ibid.* § 3207.

⁵¹⁷ *Ibid.* § 3208.

shall transact any business in this state without first having paid the license fee prescribed and obtained a license.”⁵⁰⁷

No corporation created in a foreign country, or more than twenty per cent. of whose stock is owned by non-resident aliens shall acquire, hold or own more than three hundred and twenty acres of land in this State or any interest therein except such as may be acquired by devise, inheritance, or in good faith in the course of justice in the collection of debts by due process of law. All lands acquired, held or owned in violation of the provisions hereof shall be forfeited to the State.⁵⁰⁸

“Every foreign corporation actually engaged in manufacturing within this state shall, within sixty days from the time of making a written request therefor by any resident creditor thereof, and annually thereafter upon a like request, file in the office of the secretary of state a statement showing the capital stock subscribed, the amount thereof actually paid in, the full name of each of its stockholders and the amount of stock held by each. Such request may be served by mail upon the president, secretary or other principal officer of said corporation or personally upon any officer or agent thereof who may be within this state. If any corporation shall fail to so file said report it shall forfeit all right to further carry on or transact business in this state and it shall be unlawful for it, or any person for it, to do or transact any business therein, and on such failure any person or agent who shall assume to act for or to transact any business for or on account of said corporation shall forfeit for each and every offense not less than twenty-five dollars nor more than one hundred dollars, which may be sued for in the name of the state by the district attorney of the county where such offense was committed, and the proceeds thereof, after deducting taxable costs, shall be paid into the school fund.”⁵⁰⁹

Foreign loan and building associations are required to de-

⁵⁰⁷ *Ibid.* § 3.

⁵⁰⁸ Wis. Rev. Stat. § 2200 a.

⁵⁰⁹ *Ibid.* § 1770 a.

posit with the State Treasurer for the security of all its members in the State, one hundred thousand dollars in approved securities;⁵¹⁰ to obtain a license from the Bank Examiner;⁵¹¹ and to file with the latter a copy of the charter and an appointment as attorney to receive service of process.⁵¹² Before issuing the license the examiner shall make an examination of the corporation.⁵¹³ No person shall act as agent for such association until he has procured a license to do so from the Bank Examiner.⁵¹⁴ "When, by the laws of any other state or territory, any taxes, fines, penalties, licenses, fees, deposits, money, securities or other obligations or prohibitions are imposed on building and loan associations of this state doing business in such other state or territory or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions, of whatever kind, shall be imposed upon all building and loan associations of such other state or territory doing business in this state and upon their agents here." ⁵¹⁵

A foreign corporation may sue and be sued like a domestic corporation. But it cannot maintain an action founded on any liability arising out of an act forbidden to a corporation or association of individuals to do, without express authority of law.⁵¹⁶ Suit may be brought against a foreign corporation even after it has ceased to act, and judgment satisfied out of any property of the corporation in the State, though in the hands of trustee or other person for the use of the corporation or its creditors.⁵¹⁷ Service of process on a foreign corporation may be upon any officer within the State, or any agent having charge of or conducting any business therefor in this State,

⁵¹⁰ *Ibid.* § 2014, cl. 17, 18.

⁵¹¹ *Ibid.* cl. 19.

⁵¹² *Ibid.* cl. 20.

⁵¹³ *Ibid.* cl. 23.

⁵¹⁴ *Ibid.* cl. 24.

⁵¹⁵ *Ibid.* cl. 21.

⁵¹⁶ *Ibid.* § 3207.

⁵¹⁷ *Ibid.* § 3208.

or any trustee of or assignee of such corporation, or upon the Secretary of State, as provided above. But such service can be made upon a foreign corporation only either when it has property within the State or the cause of action arose therein, or the cause of action exists in favor of a resident of the State; and upon the Secretary of State only when the cause of action arises out of business transacted in this State or when the defendant has property therein. In case of a foreign railroad company, whose general office or all whose officers reside outside the State, process may be served upon any station, freight, ticket or other agent within the State. In case of a sleeping car company, it may be served on any agent found within the State, or upon any person in charge of any car.⁵¹⁸ If suit is upon a contract, express or implied, or upon a judgment or decree, or for a tort, and the claim exceeds fifty dollars, the property of a foreign corporation may be attached.⁵¹⁹

§ 192. Wyoming.

No foreign corporation shall transact business in the State until it accepts the Constitution and files its acceptance as provided by law.⁵²⁰

A foreign corporation doing business in the State must file with the Secretary of State and also in the office of the register of deeds of the county where its business is done, a copy of its charter, or if it is incorporated under a general law a copy of its certificate of incorporation and of such general incorporation law.⁵²¹ A corporation or any person acting for it attempting to do business in the State without complying with these provisions is guilty of a misdemeanor, and shall be fined in a sum not exceeding one thousand dollars or imprisoned not more than six months.⁵²² Whenever any foreign corporation, which

⁵¹⁸ *Ibid.* § 2637.

⁵¹⁹ *Ibid.* § 2731.

⁵²⁰ Wy. Const. Art. 10, § 5.

⁵²¹ Wy. Gen. Stat. § 3265.

⁵²² *Ibid.* § 3267.

Chap. VII.] STATUTORY REGULATIONS: NOVA SCOTIA. [§ 193.

is doing business according to law in this territory, shall expire by limitation or otherwise, it shall be the duty of the agent or representative of such corporation to file and publish notices of such expiration, in the same manner as hereinbefore provided.⁵²³

A transitory action against a foreign corporation may be brought in any county in which there is property of or debts owing to the defendant, or where such defendant is found. If the defendant is a foreign insurance company, the action may be brought in a county where the cause, or some part thereof, arose.⁵²⁴ Service on a foreign corporation may be had on a managing agent; ⁵²⁵ service on an insurance company, if brought in a county where an agency is established, on the chief officer of the agency; ⁵²⁶ service on a foreign railroad company, on any regular ticket or freight agent, or if none, upon any conductor.⁵²⁷ Service by publication may be made upon a foreign corporation in any action in which it is sought by a provisional remedy to take or appropriate in any way the property of the corporation.⁵²⁸ In an action based on a contract, judgment or decree, or for causing death by a negligent or wrongful act an attachment may issue against the property of a foreign corporation.⁵²⁹

§ 193. Nova Scotia.

Foreign corporations for gain, for a purpose for which a corporation might be incorporated in Nova Scotia, shall before beginning business in the Province make out and transmit to the Provincial Secretary a statement under oath showing the name of the company, under what general or special act it was

⁵²³ *Ibid.* § 3270.

⁵²⁴ *Ibid.* §§ 3500, 3504.

⁵²⁵ *Ibid.* § 3518.

⁵²⁶ *Ibid.* § 3517.

⁵²⁷ *Ibid.* § 3516.

⁵²⁸ *Ibid.* § 3520.

⁵²⁹ *Ibid.* § 3988.

incorporated, where the head office is, the amount of capital stock authorized, subscribed and issued and the amount paid on it, the nature of each kind of business it is empowered to carry on, and the kinds carried on in Nova Scotia, and the name of the officers of the company and of its agents in Nova Scotia. A statement of changes in its officers and agents must be filed annually. The company and its officers, agents, or servants are liable to a fine of ten dollars a day for transacting business without complying with these provisions.⁵³⁰

Every company doing business in the Province, shall appoint a recognized manager or agent resident within the province, service upon whom of any process, notice or other document shall be deemed sufficient service on the company. The name and address of such manager or agent shall be filed in the office of the Provincial Secretary and in the registry of deeds for the district in which the company has its chief place of business within the Province. In default of such appointment, or in case of the absence or death of such manager or agent, process may be served on any officer or employee of the company, or for want of such officer or employee may be posted on a principal building of the company, and this shall be sufficient service on the company.⁵³¹

Every foreign corporation doing business in the Province must publish a list of its shareholders.⁵³²

§ 194. Ontario.

No "extra-provincial" corporation (except corporations of the Dominion of Canada, as to which special provisions are in force) shall carry on any of its business in Ontario until licensed to do so; "provided that taking orders for, or buying or selling goods, wares and merchandise by travellers or by correspondence, if the corporation has no resident agent or representative and no office or place of business in Ontario,

⁵³⁰ Nov. Sc. Rev. Stat. ch. 127, § 18.

⁵³¹ *Ibid.* ch. 127, § 14; 1903, ch. 16, § 1.

⁵³² *Ante*, § 64.

shall not be deemed a carrying on of business within the meaning of this Act." The burden of proving that a corporation has no resident agent or office shall rest on the accused in any prosecution under the Act.⁵³³

Application for a license shall be made to the Lieutenant-Governor, who may make regulations as to the evidence required, form of license, etc.;⁵³⁴ and the corporation shall satisfy the Provincial Secretary that the provisions of the Act have been complied with.⁵³⁵ Notice of the granting of the license shall be published in the Gazette.⁵³⁶ When the license has been granted the corporation may exercise in Ontario all its powers, or such as may be embraced in the license;⁵³⁷ and may acquire, hold and alienate real estate to the same extent as if it had been incorporated in Ontario.⁵³⁸ Annual returns must be made to the Provincial Secretary.⁵³⁹ The license may be suspended or revoked for cause, or restored, by the Lieutenant Governor.⁵⁴⁰

For carrying on business without a license the corporation is subject to a penalty of fifty dollars a day, and its servant or agent twenty dollars a day;⁵⁴¹ and "so long as it remains unlicensed under this Act it shall not be capable of maintaining any action, suit or other proceeding in any Court in Ontario in respect of any contract made in whole or in part within Ontario in the course of or in connection with business carried on contrary to the provisions of said section 6; provided, however, that upon the granting or restoration of the license, or the renewal of any suspension thereof, such action, suit or other proceeding may be maintained as if such license had been

⁵³³ Ont. 1900, ch. 24, § 6.

⁵³⁴ *Ibid.* §§ 7, 8.

⁵³⁵ *Ibid.* § 9.

⁵³⁶ *Ibid.* § 11.

⁵³⁷ *Ibid.* § 7.

⁵³⁸ *Ibid.* § 10.

⁵³⁹ *Ibid.* § 12.

⁵⁴⁰ *Ibid.* § 13.

⁵⁴¹ *Ibid.* §§ 14, 15.

granted or restored or such suspension had been removed before the institution thereof.”⁵⁴²

§ 195. New Brunswick.

The provisions are similar to those of Ontario.⁵⁴³ The license must be renewed annually.⁵⁴⁴

§ 196. Quebec.

Every incorporated company carrying on any labor, trade or business in the Province (except banks) delivers to the prothonotary of the Superior Court in each district or to the registrar of each registration division in which it is to carry on business a written declaration signed by its president when its chief office is in the Province or by the principal manager or chief agent in the Province when it has only branches or agencies therein, stating the name of the company, where and how it was incorporated, the date of its incorporation, and where its principal place of business within the Province is situated.⁵⁴⁵ Process is served by leaving a copy at the principal place of business with any grown person in charge thereof, or with the president or secretary.⁵⁴⁶

Every company incorporated in Great Britain, Canada or the United States, has the right to acquire and hold land in the Province, for the purposes of its business only.⁵⁴⁷

⁵⁴² *Ibid.* § 14.

⁵⁴³ N. B. 1903, ch. 25.

⁵⁴⁴ *Ibid.* § 6, cl. 2.

⁵⁴⁵ Que. Rev. Stat. Art. 4754.

⁵⁴⁶ *Ibid.* Art. 4748.

⁵⁴⁷ *Ibid.* Art. 4762.

CHAPTER VIII

DOING BUSINESS.

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| <p>§ 201. Limitation on right to do business.</p> <p>202. Statutes construed in accordance with the Constitution.</p> <p>203. Form of certificate required.</p> <p>204. What is doing business; single act.</p> <p>205. What is doing business: continuous business action.</p> <p>206. What is doing business: acting through agent.</p> <p>207. What is doing business: principal act outside State.</p> <p>208. What is doing business: exceptional doctrine in Alabama.</p> | <p>§ 209. What is doing business: taking part in suit.</p> <p>210. What is doing business: question for the jury.</p> <p>211. Effect of compliance with the statute.</p> <p>212. Effect of non-compliance with the statute.</p> <p>213. Authorities holding the transaction valid.</p> <p>214. Authorities holding the transaction void.</p> <p>215. Penalty for non-compliance.</p> <p>216. Legal proceedings upon non-compliance.</p> |
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§ 201. Limitation on right to do business.

We have seen that a State has a right to forbid or to regulate the action within it of a foreign corporation, except so far as it is forbidden by some constitutional provision; and that such regulations have been adopted in every jurisdiction. The purpose of these regulations, in brief, is to prevent foreign corporations from obtaining an unfair advantage over domestic corporations and individuals. Such advantage might be obtained in several ways: by escaping taxation; by avoiding service of process; by avoiding State oversight to secure solvency or publicity as to condition; by avoiding State regulation for the protection of local creditors. Statutes adopted for limiting the action of foreign corporations are almost always directed to prevent foreign corporations from obtaining such advantages.

It is easy to see that if foreign corporations were allowed to carry on their business without special provisions as to taxation, they would in many States have so distinct an advantage over domestic corporations as to cause incorporation within the State to be avoided. If a foreign corporation could do business without being amenable to process, it would possess an undue advantage over both domestic corporations and individuals, since both could always be reached by process. And the same advantage would accrue to a foreign corporation which could evade the local regulations for securing persons dealing with corporations against those forms of fraud which are peculiarly within the power of unregulated corporations. In these days when incorporation is the commonest form of business association, and when loose corporation laws prevail in so many States, some of which, bidding against each other for business, offer special inducements in the way of restricted liability and unrestricted power, no State would be prepared to accept the doctrine of *laissez faire* and give foreign corporations free rein.

But the evil to be avoided exists only when the foreign corporation is in a fair sense in competition with domestic corporations and individuals; that is, when it is establishing or attempting to establish a business within the State. A foreign corporation which does a single casual act in a State does not interfere with the general policy of that State. The regulating statutes therefore apply only to corporations which carry on business within the State.

§ 202. Statutes construed in accordance with the Constitution.

It is a general rule that statutes are, if possible, to be so construed as not to conflict with any constitutional provision; and upon this principle the statutes regulating foreign corporations are construed. In particular, the statutes do not include under the phrase doing business the carrying on of interstate commerce, since the States have no power to regulate such commerce.

§ 203. Form of certificate required.

The legislation adopted for the regulation of foreign corporations requires as a first step the filing with some State officer a certificate, containing a copy of the charter or articles of incorporation and other information about the business of the corporation, and designating an agent upon whom service of process may be had in all actions brought against the corporation.

The form of certificate is usually prescribed in detail by the act, or a form is adopted by the State official having control; and it is in general sufficient to follow the prescribed form. In designating an agent it is not necessary to name him; it is enough to describe him. For instance, "the general manager" is sufficient designation of the person authorized to receive service of process.¹ Where the "place of business" is to be stated, it is enough to state the city or town without pointing out the place more specifically;² and if a "known place of business" is required it is sufficient that business is carried on in a place without concealment, so that the public may on enquiry ascertain the place, though the corporation does not itself convey information as to its place of business to everyone.³

§ 204. What is doing business: single act.

Doing a single and isolated act of business is not "doing" or "carrying on" business within the language of the statutes. Some continuous prosecution of business must at least be contemplated. "The obvious construction, therefore, of the Constitution and the statute is, that no foreign corporation shall begin any business in the State with the purpose of pursuing or carrying it on, until it has filed a certificate. . . . To require such a certificate as a prerequisite to the doing of a single act of business when there was no purpose to do any other

¹ Goodwin v. Colorado M. I. Co., 110 U. S. 1, 28 L. ed. 47.

² McLeod v. American F. L. M. Co., 100 Ala. 496, 14 So. 409.

³ New England M. S. Co. v. Ingram, 91 Ala. 337, 9 So. 140.

business or have a place of business in the State, would be unreasonable and incongruous." ⁴

On this principle the following acts have been held not to constitute doing business on the part of a foreign corporation: making a contract; ⁵ making a sale; ⁶ making an occasional purchase; ⁷ making a policy of insurance; ⁸ taking a mortgage for a present consideration, ⁹ or to secure a past due debt; ¹⁰ or taking other security, such as a note, for a past debt, ¹¹ or on a settlement of account; ¹² collecting a debt, as a premium on an insurance policy; ¹³ purchasing a promissory note; ¹⁴ purchasing and holding ¹⁵ or renting ¹⁶ land; purchasing at an

⁴ Woods, J., in *Cooper Manufacturing Co. v. Ferguson*, 113 U. S. 727, 735, 28 L. ed. 1137. *Acc. Sigel-Campion L. S. C. Co. v. Haston*, (Kan.) 75 Pac. 1028.

⁵ *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727, 28 L. ed. 1137; *Empire Milling & Mining Co. v. Tombstone Mill. & Mining Co.*, 100 Fed. 910; *Babbitt v. Field*, (Ariz.) 52 Pac. 775; *Hogan v. City of St. Louis*, (Mo.) 75 S. W. 604; *Henry v. Simanton*, 64 N. J. Eq. 572, 54 Atl. 153 (*semble*); *Nat'l Knitting Co. v. Bronner*, 45 N. Y. S. 714, 20 Misc. 125; *Com. v. Standard Oil Co.*, 101 Pa. 119; *Kilgore v. Smith*, 122 Pa. 48, 15 Atl. 698; *Milan Milling & Mfg. Co. v. Gorten*, 93 Tenn. 590, 27 S. W. 971, 26 L. R. A. 135; *Davis & Rankin Bldg. & Mfg. Co. v. Caigle*, (Tenn. Ch. App.) 53 S. W. 240.

⁶ *Colo. Iron Works v. Sierra Grande Min. Co.*, 15 Colo. 499, 25 Pac. 325, 22 A. S. R. 433; *Gates Iron Works v. Cohen*, 7 Colo. App. 341, 43 Pac. 667; *D. & H. Canal Co. v. Mahlenbrock*, 63 N. J. L. 281, 43 Atl. 978; *Blakeslee Mfg. Co. v. Hilton*, 18 Pa. Co. Ct. 553.

⁷ *Good Hope Co. v. Railway Barb Fencing Co.*, 22 Fed. 635; *St. Louis Wire Mill Co. v. Consol. Barb Wire Co.*, 32 Fed. 802; *Colorado Iron-Works v. Sierra Grande Min. Co.*, 15 Colo. 499, 25 Pac. 325, 22 A. S. R. 433.

⁸ *Tabor v. Goss & P. Mfg. Co.*, 11 Colo. 419, 18 Pac. 537.

⁹ *Clews v. Woodstock Iron Co.*, 44 Fed. 31; *Gilchrist v. Helena H. S. & S. R. R.*, 47 Fed. 593; *New York & S. C. Co. v. Winton*, (Pa.) 57 Atl. 955; *Keene Guar. Sav. Bank v. Lawrence*, 32 Wash. 572, 73 Pac. 680.

¹⁰ *Florsheim Bros. D. G. Co. v. Lester*, 60 Ark. 120, 29 S. W. 34, 27 L. R. A. 505, 46 A. S. R. 162.

¹¹ *Fuller & Johnson Mfg. Co. v. Foster*, 4 Dak. 329, 30 N. W. 166; *Creteau v. Foote & Thorne G. Co.*, 40 App. Div. 215, 57 N. Y. S. 1103; *Security Co. v. Panhandle Nat. Bank*, 93 Tex. 575, 57 S. W. 22.

¹² *New Jersey S. T. Co. v. Riehl*, 9 Pa. Super. Ct. 223.

¹³ *Frawley v. Pennsylvania C. Co.*, 124 Fed. 259.

¹⁴ *Commercial Bank v. Sherman*, 28 Ore. 573, 43 Pac. 658, 52 A. S. R. 811.

¹⁵ *Lakeview Land Co. v. San Antonio T. Co.*, 95 Tex. 252, 66 S. W. 766.

¹⁶ *Missouri C. & M. Co. v. Ladd*, 160 Mo. 435, 61 S. W. 191.

execution sale land ¹⁷ or personalty; ¹⁸ sending temporarily into the State a general agent to appoint local agents.¹⁹

§ 205. Continuous business action.

Where, however, the foreign corporation enters upon a continuous line of business it is doing business within the State. Thus it is carrying on business to operate a factory under contract, supplying a superintendent;²⁰ to maintain an office for directors' meetings, at which all dividends are declared;²¹ to become a special partner in a limited partnership within the State, contributing to its capital;²² to procure or manufacture outside the State and deliver under contract within the State, for a period of several months, large quantities of ice;²³ to hold land for educational purposes;²⁴ to lease land for pasturing cattle;²⁵ to act as trustee;²⁶ to collect by resident agent premiums on policies formerly issued to residents of the State, though no policies are now issued;²⁷ to operate, by lease or otherwise, alone or jointly with the owner, a domestic railroad.²⁸

¹⁷ *Meddis v. Kenney*, (Mo.) 75 S. W. 633.

¹⁸ *Crook v. Girard I. & M. Co.*, 87 Md. 138, 39 Atl. 94, 67 A. S. R. 325.

¹⁹ *D. S. Morgan & Co. v. White*, 101 Ind. 413.

²⁰ *Diamond Glue Co. v. United States Glue Co.*, 187 U. S. 611, 47 L. ed. 328.

²¹ *Peo. v. Horn Silver Mining Co.*, 105 N. Y. 76, 11 N. E. 155.

²² *Peo. v. Roberts*, 152 N. Y. 59, 46 N. E. 161, 36 L. R. A. 756 (affirming 11 App. Div. 310); *Com. v. Standard Oil Co.*, 101 Pa. 119.

²³ *West Jersey I. M. Co. v. Armour*, 12 Pa. Super. Ct. 443.

²⁴ *Santa Clara Female Academy v. Sullivan*, 116 Ill. 375, 6 N. E. 183, 56 A. R. 776.

²⁵ *Texas & P. Ry. v. Davis*, (Tex. Civ. App.) 54 S. W. 381.

²⁶ *Pennsylvania Co. v. Bauerle*, 143 Ill. 459, 33 N. E. 166; *Farmers' L. & T. Co. v. Lake Street E. R. R.*, 173 Ill. 439, 51 N. E. 55.

²⁷ *Connecticut M. L. I. Co. v. Spratley*, 172 U. S. 602, 43 L. ed. 569; *Price v. St. Louis M. L. Ins. Co.*, 3 Mo. App. 262; *Smyth v. International L. Assur. Co.*, 35 How. Pr. 126.

²⁸ *Erie Ry. v. Pennsylvania*, 21 Wall. 492, 22 L. ed. 595; *Van Dresser v. Oregon Ry. & N. Co.*, 48 Fed. 202; *Norton v. Atchison, T. & S. F. R. R.*, 61 Fed. 618; *Buie v. Chicago, R. I. & P. Ry.*, 95 Tex. 51, 65 S. W. 27, 55 L. R. A. 861.

It is not essential for the application of this principle that several acts of business should already have been done; if a regular business is contemplated, the corporation has begun to carry on business when it does its first business act. "Although the record in each case discloses but one transaction of the corporation, that transaction was not merely incidental or casual. It was a part of the very business to perform which the corporation existed. It did distinctly indicate a purpose on the part of the corporation to engage in business within the state, and to make Kansas a part of its field of operation, where a substantial part of its ordinary traffic was to be carried on. Therefore, although a single act, it constituted a doing of business in the state within the meaning of the statute, while several acts of a different nature might not have had that effect."²⁹

Two New York cases, seemingly opposed to the current of authority, require explanation. In them a foreign corporation maintained an office in New York, at which the directors met and declared dividends. In one of the cases it was attempted to declare the corporation, a foreign railroad company, a bankrupt in New York, on the ground that it was there engaged in business; but the court held that the act did not confer jurisdiction unless the company actually carried on its business, *i. e.*, operated its railroad, within the State.³⁰ This is obviously a different question. In the other case it was attempted to tax the corporation on the money brought into the State to pay dividends; by the taxing act a foreign corporation doing business in the State was taxable on its capital therein invested, and the court, not passing on the question of doing business, held that there was no capital invested in New York.³¹ In both cases the corporation appears to have been doing business within the State.³²

²⁹ *Mason, J.*, in *John Deere Plow Co. v. Wyland*, (Kan.) 76 Pac. 863.

³⁰ *In re Alabama & C. R. R.*, Fed. Cas. 124, 9 Blatch. 390.

³¹ *Peo. v. Feitner*, 77 App. Div. 189, 78 N. Y. S. 1017.

³² See also *Doty v. Michigan C. R. R.*, 8 Abb. Pr. 427.

§ 206. What is doing business: acting through agent.

A foreign corporation can act only through an agent; and consequently if an ordinary agent is appointed by the company and permanently established in the State to carry on the business of the company, the company is doing business in the State. The clearest case of this sort is the appointment of a resident manager for a branch office;³³ but if the corporation maintains a resident agency, even if it does not amount to a branch establishment, the corporation is doing business, as when it appoints resident agents to solicit loans,³⁴ or insurance, or to make sales,³⁵ or purchases of raw materials.³⁶

On the other hand, where the corporation merely ships goods to a factor or commission merchant, who sells and accounts to the corporation, the corporation is not carrying on business where the sales are made.³⁷ The factor is carrying on an independent business; the only business of the corporation is its dealing with the factor. Conversely, when the foreign corporation is acting as a mere agent for a domestic corporation, the latter corporation alone being really concerned in the matter, the foreign corporation is not doing business in the State. Thus where a foreign corporation procured a contract as promoter of a contemplated domestic corporation, and the latter was immediately formed and took over the contract,

³³ *Haggin v. Comptoir d'Escompte*, 23 Q. B. Div. 519; *Nutter v. Messageries Maritimes*, 54 L. J. Q. B. 527; *Bowden v. Imperial M. & T. Ins. Co.*, 2 New So. Wales St. Rep. (Law) 257.

³⁴ *United States Loan Co. v. Miller*, (Tenn. Ch.) 47 S. W. 17.

³⁵ *Cone v. Tuscaloosa Mfg. Co.*, 76 Fed. 891; *Fay Fruit Co. v. McKinney*, (Mo. App.) 77 S. W. 160; *Milsom R. & F. Co. v. Kelly*, 10 Pa. Super. Ct. 565; *First Nat. Bank v. Coughron*, (Tenn. Ch.) 52 S. W. 1112.

³⁶ *Chicago M. & L. Co. v. Sims*, 101 Mo. App. 569, 74 S. W. 128.

³⁷ *Bertha Zinc & Min. Co. v. Clute*, 7 Misc. 123, 27 N. Y. S. 342; *Hovey's Estate*, 198 Pa. 385, 48 Atl. 311; *Allen v. Buggy Co.*, 91 Tex. 22, 40 S. W. 393; *Glanville v. J. B. Lippincott Co.*, 17 W. N. New So. Wales, 74 See to the same effect *Dallas v. Atlantic, M. & O. R. R.*, 2 McAr. (Dist. Col.) 146 (sale of tickets of foreign road by domestic road; foreign road not doing business); *United States v. American Bell Tel. Co.*, 29 Fed. 17 (license to domestic corporation by foreign corporation to use patented telephones; foreign corporation not doing business).

the foreign corporation was not doing business, and it was immaterial whether it had complied with the statute.³⁸

Where the agent carries on business in his own name and on his own account, hiring his office and clerks and paid like a factor by a commission, but differing from a factor in representing the corporation alone, the case is a more difficult one. It has been held in such a case that the corporation is carrying on the business, through its agent;³⁹ but the opinion in England is different. A corporation under such circumstances was held not suable in England as doing business there. Justice Gorell-Barnes said: "In a popular sense, no doubt, the business of the defendant corporation is carried on by the corporation in England, but I do not think that this is so in the eye of the law. It seems to me that the business carried on in this country is that of an agency for the defendant corporation."⁴⁰

§ 207. What is doing business: principal act outside State.

When the business is consummated outside the State, even though a part of the transaction takes place within the State, the corporation does not do business in the State. Thus where a foreign corporation solicits orders in the State by commercial travellers, the orders being transmitted to the corporation at its domicile and there filled, the sale is made and the business is therefore done at the domicile of the corporation. The foreign corporation in such a case is not doing business in the State.⁴¹ So where an offer for any contract, received by an

³⁸ *Greenville v. Greenville W. W. Co.*, 125 Ala. 625, 27 So. 764.

³⁹ *Lambe v. Dewhurst & Son*, 16 Quebec S. C. 326.

⁴⁰ *The Princesse Clémentine*, [1897] P. 18, 21.

⁴¹ *Holder v. Aultman*, 169 U. S. 81, 42 L. ed. 669; *Payson v. Withers*, Fed. Cas. 10,864, 5 Biss. 269; *Lamb v. Bowser*, Fed. Cas. 8009, 7 Biss. 372; *Davis & R. B. & M. Co. v. Dix*, 64 Fed. 406; *Wagner v. Meakin*, 92 Fed. 76, 33 C. C. A. 585, and note; *St. v. Williams*, 46 La. Ann. 922, 15 So. 290; *M. I. Wilcox C. & S. Co. v. Mosher*, 114 Mich. 64, 72 N. W. 117; *Hart v. Livermore F. & M. Co.*, 72 Miss. 809, 17 So. 769; *Blevins v. Fairley*, 71 Mo. App. 259; *Droege v. Ahrens & O. M. Co.*, 163 N. Y. 466, 57 N. E. 747; *Tallapoosa Lumber Co. v. Holbert*, 5 App. Div. 559, 39 N. Y. S. 432; *People*

agent within the State, is transmitted by him to the home office and there accepted, the business is done outside the State; the case being very different from that of the employment of a resident agent for the transaction of the business itself instead of for the mere transmission of offers. Thus where applications for insurance are received in the State, transmitted to the home office, and there accepted and the policy issued, the company does not do business in the State.⁴² In the same way it is not doing business in the State to solicit advertisements,⁴³ or subscriptions⁴⁴ or loans,⁴⁵ or even to receive and transmit orders for the sale of goods.⁴⁶ And where there is no one within the State acting as even an agent for transmitting an offer, as where an offer is sent by mail from within the State to the foreign corporation and accepted at its home office, there is obviously no business done by the corporation within the State.⁴⁷

Even clearer is the case where the entire dealing by all

v. Roberts, 27 App. Div. 455, 50 N. Y. S. 355; *Vaughn Machine Co. v. Lighthouse*, 64 App. Div. 138, 71 N. Y. S. 799; *Cummer Lumber Co. v. Assoc. M. M. F. I. Co.*, 67 App. Div. 151, 73 N. Y. S. 608; *Murphy Varnish Co. v. Connell*, 10 Misc. 553, 32 N. Y. S. 492; *American B. & B. Co. v. Addickes*, 19 Misc. 36, 42 N. Y. S. 871; *Waller v. Rothfield*, 36 Misc. 177, 73 N. Y. S. 141; *Jones v. Keeler*, 40 Misc. 221, 81 N. Y. S. 648; *Toledo Commercial Co. v. Glen Mfg. Co.*, 55 Oh. St. 217, 45 N. E. 197; *Hacheny v. Leary*, 12 Ore. 40, 7 Pac. 329; *Mearshon v. Pottsville L. Co.*, 187 Pa. 12, 40 Atl. 1019, 67 A. S. R. 560; *Wolff Dryer Co. v. Bigler*, 192 Pa. 466, 43 Atl. 1092; *Macdougall v. Schofield Woolen Co.*, 16 Quebec S. C. 411.

⁴² *Marine Ins. Co. v. St. Louis, I. M. & S. Ry.*, 41 Fed. 643; *Hazeltine v. Miss. Val. F. Ins. Co.*, 55 Fed. 743; *State M. F. I. Assoc. v. Brinkley S. & H. Co.*, 61 Ark. 1, 31 S. W. 158, 54 A. S. R. 191; *New Orleans v. Rhenish W. Lloyds*, 31 La. Ann. 781; *New Orleans v. Virginia F. & M. Ins. Co.*, 33 La. Ann. 10; *Attorney General v. Netherland F. Ins. Co.*, 181 Mass. 522, 63 N. E. 950; *Fulton v. Commercial T. M. A. Assoc.*, 172 Pa. 117, 33 Atl. 324.

⁴³ *Boardman v. S. S. McClure Co.*, 123 Fed. 614.

⁴⁴ *Beard v. Union & A. Pub. Co.*, 71 Ala. 60.

⁴⁵ *Scottish A. M. Co. v. Ogden*, 49 La. Ann. 8, 21 So. 116; *American F. L. M. Co. v. Pierce*, 49 La. Ann. 390, 21 So. 972.

⁴⁶ *Penn Collieries Co. v. McKeever*, 93 App. Div. 303, 87 N. Y. S. 869.

⁴⁷ *Shelby S. T. Co. v. Burgess Gun Co.*, 8 App. Div. 444, 40 N. Y. S. 871; *Vaughn Machine Co. v. Lighthouse*, 64 App. Div. 138, 71 N. Y. S. 799.

parties to the transaction takes place outside the State, though it has reference to some act done or to be done or to property situated within the State. So it is not doing business within a State to make outside the State a loan on security of land within the State;⁴⁸ to take outside the State title to land within the State;⁴⁹ to lease outside the State telephones within the State belonging to the foreign corporation;⁵⁰ to lease outside the State a steamboat belonging to the corporation to be run by the charterer within the State;⁵¹ to sell outside the State goods to be delivered within the State;⁵² to purchase outside the State negotiable instruments executed within the State;⁵³ to receive at its home office premiums on policies issued to persons within the State which by their terms call for payment by mail at the home office;⁵⁴ or to stipulate in a mortgage deed made outside the State that the contract shall be construed and governed by the laws of the State.⁵⁵

§ 208. What is doing business: exceptional doctrine in Alabama.

The Alabama courts have adopted a more stringent doctrine. They hold that if the foreign corporation does a single act of business within the State, or even solicits through an agent a single loan, it violates the statute which forbids it to do "any

⁴⁸ *Eastern B. & L. Ass. v. Bedford*, 88 Fed. 7; *Caesar v. Capell*, 83 Fed. 403; *Sullivan v. Sheehan*, 89 Fed. 247; *Scruggs v. Scottish Mtg. Co.*, 54 Ark. 566, 16 S. W. 563; *Reeves v. Harper*, 43 La. Ann. 516, 9 So. 104; *Peo. Bldg. Loan & Sav. Ass. v. Berlin*, 201 Pa. 1, 50 Atl. 308, 88 A. S. R. 764; *Norton v. Union Bank & Trust Co.*, (Tenn. Ch. App.) 46 S. W. 544; *Neal v. New Orleans L. B. & S. Ass.*, 100 Tenn. 607, 46 S. W. 755.

⁴⁹ *Goldsberry v. Carter*, 100 Va. 438, 41 S. E. 858.

⁵⁰ *United States v. American B. T. Co.*, 29 Fed. 17.

⁵¹ *Savage v. Atlanta H. I. Co.*, 55 App. Div. 20, 66 N. Y. S. 1105.

⁵² *Cook v. Rome Brick Co.*, 98 Ala. 409, 12 So. 918; *In re Simonds Furnace Co.*, 61 N. Y. S. 974, 30 Misc. 209; *H. Zuberbier Co. v. Harris*, (Tex. Civ. App.) 35 S. W. 403.

⁵³ *Bamberger v. Schoolfield*, 160 U. S. 149, 40 L. ed. 374; *Miller v. Williams*, 27 Colo. 34, 59 Pac. 740.

⁵⁴ *State v. Connecticut Mut. Life Ins. Co.*, 106 Tenn. 282, 61 S. W. 75.

⁵⁵ *British & A. M. Co. v. Winchell*, 62 Ark. 160, 34 S. W. 891.

business" before filing a certificate.⁵⁶ These decisions were followed by the Supreme Court of the United States, construing the Alabama statute in an appeal from the Federal Court in Alabama,⁵⁷ and therefore bound by the peculiarities of Alabama law, without at all weakening the force of its earlier decisions the other way on the general question. The same doctrine appears to prevail in Nevada.⁵⁸

§ 209. What is doing business: taking part in suit.

It is everywhere held that bringing suit is not doing business;⁵⁹ nor is filing a petition in court.⁶⁰ And of course defending a suit is not doing business.⁶¹

§ 210. What is doing business: question for the jury.

It is generally held that the question whether a given act is a doing of business is, when the facts are in doubt, a question for the jury.⁶²

⁵⁶ *Denson v. Chattanooga N. B. & L. Assoc.*, 107 Fed. 777; *Farrior v. New England M. Security Co.*, 88 Ala. 275, 7 So. 200; *State v. Bristol Sav. Bank*, 108 Ala. 3, 18 So. 533, 54 A. S. R. 141, and cases cited.

⁵⁷ *Chattanooga N. B. & L. Assoc. v. Denson*, 189 U. S. 408, 47 L. ed. 870.

⁵⁸ *Brooks v. Nevada Nickel Syndicate*, 24 Nev. 311, 53 Pac. 597.

⁵⁹ *American L. & T. Co. v. East & W. R. R.*, 37 Fed. 242; *Ginn v. New England M. S. Co.*, 92 Ala. 135, 8 So. 388; *Cook v. Rome Brick Co.*, 98 Ala. 409, 12 So. 918; *McCall v. American F. L. M. Co.*, 99 Ala. 427, 12 So. 806; *St. Louis, A. & T. Ry. v. Fire Assoc.*, 55 Ark. 163, 18 S. W. 43; *Buffalo Z. & C. Co. v. Crump*, 70 Ark. 525, 69 S. W. 572, 91 A. S. R. 87; *Utley v. Clark G. L. Min. Co.*, 4 Col. 369; *Kephart v. Peo.*, 28 Colo. 73, 62 Pac. 946; *Amer. B. H. & O. S. S. Machine Co. v. Moore*, 2 Dak. 280, 8 N. W. 131; *Fuller & Johnson Mfg. Co. v. Foster*, 4 Dak. 329, 30 N. W. 166; *Mandel v. Swan L. & Cattle Co.*, 154 Ill. 177, 40 N. E. 462, 27 L. R. A. 313, 45 A. S. R. 124; *Powder R. C. Co. v. Custer County*, 9 Mont. 145, 22 Pac. 383; *George R. Barre L. S. C. Co. v. Range Valley C. Co.*, 16 Utah, 59, 50 Pac. 630; *Chicago T. & T. Co. v. Bashford*, (Wis.) 97 N. W. 940.

⁶⁰ *Gates Iron Works v. Cohen*, 7 Colo. App. 341, 43 Pac. 667.

⁶¹ *American L. & T. Co. v. East & W. R. R.*, 37 Fed. 242; *Christian v. Amer. F. L. Mfg. Co.*, 89 Ala. 198, 7 So. 427.

⁶² *Oakland Sugar Mill Co. v. Fred W. Wolf Co.*, 118 Fed. 239; *Audenried v. East Coast Milling Co.*, 124 Fed. 697; *Com. v. Read Phosphate Co.*, 23 Ky. L. Rep. 2284, 67 S. W. 45; *Liebig Mfg. Co. v. Hill*, 7 Pa. Super. Ct. 15.

§ 211. Effect of compliance with the statute.

After a foreign corporation has complied with all the conditions imposed upon it by statute it has all the rights which a similar domestic corporation has, in other words it is in the same position.⁶³ Thus it may challenge the validity of statutes affecting it.⁶⁴ It may become surety on a bond;⁶⁵ and acquire land;⁶⁶ and it may take a greater rate of interest than the legal rate if such greater rate is allowed by statute to domestic corporations.⁶⁷ So, too, its agents are subject to no greater liability than the agents of similar domestic corporations.⁶⁸ And these statements remain true though the corporation is in no way regarded as a domestic corporation;⁶⁹ nor is it any less a non-resident corporation than before. Thus it is still subject to attachment as a non-resident,⁷⁰ and if it brings suit it may be compelled as a non-resident to file security for costs;⁷¹ and it may remove a suit brought against it by a citizen of the State to the Federal courts.⁷²

Furthermore, the foreign corporation may exercise all the rights granted by its charter insofar as they are not prohibited by the conditions imposed by the statutes, or contrary to the public policy of the State in which the corporation desires to act.⁷³ And it may compel the issue to it of a license after it has fulfilled the forms of the law.⁷⁴ As the foreign corpora-

⁶³ *Security Sav. & Loan Assoc. v. Elbert*, 153 Ind. 198, 54 N. E. 753; *Santa Clara Female Academy v. Sullivan*, 116 Ill. 375, 6 N. E. 183, 56 A. R. 776; *Floyd v. Nat'l Loan & Inv. Co.*, 49 W. Va. 327, 38 S. E. 653, 87 A. S. R. 805, 54 L. R. A. 536.

⁶⁴ *Niagara Fire Ins. Co. v. Cornell*, 110 Fed. 816.

⁶⁵ *Lovejoy v. Isbell*, 70 Conn. 557, 40 Atl. 532; *Less v. Ghio*, 92 Tex. 651, 51 S. W. 502.

⁶⁶ *Lancaster v. Amsterdam Imp. Co.*, 140 N. Y. 576, 35 N. E. 964.

⁶⁷ *Interstate Bldg. & Loan Ass. v. Brown*, 128 Ala. 462, 29 So. 656.

⁶⁸ *Hudson v. Compere*, 94 Tex. 449, 61 S. W. 389.

⁶⁹ *Post*, § 773.

⁷⁰ *Cowardin v. Universal L. I. Co.*, 32 Grat. (Va.) 445.

⁷¹ *J. L. Mott Iron Works v. Faith*, 23 Pa. Co. Ct. 665.

⁷² *Fox v. American C. I. & S. Co.*, 12 Pa. Co. Ct. 207.

⁷³ *Am. Waterworks Co. v. Farmers' Loan & Trust Co.*, 73 Fed. 956.

⁷⁴ *Bankers' Life Ins. Co. v. Howland*, 73 Vt. 1, 48 Atl. 435, 57 L. R. A. 374.

tion which has complied with the law has all the rights of a similar domestic corporation, it would seem to follow that, conversely, it can have no greater rights. It must, like them, obey the local laws;⁷⁵ for example, laws requiring books to be kept at its office and open to inspection.⁷⁶ And it is like them subject to taxation.⁷⁷ And if it fails to obey state laws, it may by *quo warranto* be ousted from the exercise of corporate privileges within the State.⁷⁸

Since a State has the power to set terms on the right of a foreign corporation to enjoy the benefit of its laws it would seem to be clear that when it has set terms, a corporation which has not complied cannot avail itself of privileges under state corporation laws,⁷⁹ nor can it obtain a mandamus to the Secretary of State to compel the issue to it of a license.⁸⁰ Nor can it invoke the aid of court to prevent interference with it.⁸¹ In short, the effect of compliance with the statute is to place the foreign corporation with regard to its rights and duties

⁷⁵ *London, Paris & Amer. Bank v. Aronstein*, 117 Fed. 601; *Glen Falls Portland Cement Co. v. Trav. Ins. Co.*, 42 N. Y. S. 285; 11 App. Div. 411; *Hiskey v. Pacific S. S. L. & B. Co.*, (Utah) 76 Pac. 20; *Floyd v. Nat'l Loan & Inv. Co.*, 49 W. Va. 327, 38 S. E. 653, 87 A. S. R. 805, 54 L. R. A. 536.

⁷⁶ *Recknagel v. Empire Self Lighting Oil Lamp Co.*, 52 N. Y. S. 635, 24 Misc. 193; *Cox v. Island Mining Co.*, 73 N. Y. S. 69, 65 App. Div. 508; *People v. Knickerbocker Trust Co.*, 77 N. Y. S. 1030, 38 Misc. 446; *People v. Montreal & Boston Copper Co.*, 81 N. Y. S. 974, 40 Misc. 282.

⁷⁷ *Erie Ry. Co. v. Pa.*, 21 Wall. 492, 22 L. ed. 595; *People v. Feitner*, 65 N. Y. S. 518, 31 Misc. 553; *People v. Feitner*, 70 N. Y. S. 836, 60 App. Div. 628; *People v. Comrs. of Taxes*, 74 N. Y. S. 485, 39 Misc. 282.

⁷⁸ *State v. Standard Oil Co.*, 61 Neb. 28, 84 N. W. 413, 87 A. S. R. 449.

⁷⁹ *Rio Grande W. Ry. Co. v. Telluride Power Transmission Co.*, 23 Utah, 22, 63 Pac. 995, but see *Kelley v. Rice-Blake Lumber Co.*, 167 Mass. 28, 44 N. E. 1090. In that case the Supreme Judicial Court held that a corporation could file a petition in insolvency under Massachusetts law though it had not complied with the statutes on foreign corporations. The ground taken by the court seems to be that as the statute made the officers subject to a penalty for failure to comply, that penalty was exclusive.

⁸⁰ *English & Scot.-Am. Mtg. & Inv. Co. v. Hardy*, 93 Tex. 289, 55 S. W. 169.

⁸¹ *Elec. News & Money Trans. Co. v. Perry*, 75 Fed. 898.

in the exact position it would occupy if the statute had not been passed, and it were left to the common law.

§ 212. Effect of non-compliance with the statute.

An interesting question is presented when a corporation which has not complied with the law does business within the State. Do any rights arise as a result of those acts? On this point there is a conflict of authority. There is no doubt that a State might *ipsis verbis* say an act which would complete a contract if performed by an individual or a domestic corporation, or for his or its benefit, shall not complete a contract, if the party performing or to be benefited is a foreign corporation. But the laws regulating the business of foreign corporations are not usually so explicitly framed. They do not in terms change the common law as to the making of contracts, or the creation of rights. It becomes necessary, therefore, to interpret them, and to determine whether their effect is to make the contract void or merely to bar remedy on it.

On the one side it is urged that the power of the corporation to contract is undoubted; that the statute is in derogation of common-law rights, and should be strictly interpreted; and that the penalty provided in the act for non-compliance (usually a fine) should be exclusive. "Its purpose was not to avoid contracts; but to provide for an effective supervision and control of the business proposed to be carried on here by foreign corporations. It provided no penalty, in the event of a non-compliance, other than the suspension of civil remedies. Such, and such only, were the consequences of the violation of the statute and none others will be implied as intended by the legislature. The offense aimed at was only an offense because declared by the statute to be so, and its particular proportion and consequences were defined therein. The concluding clause of section 15, which prescribed the consequences to follow upon a failure to comply with the statute, qualified the absolute nature of the earlier prohibitory declaration and, unless it were given that effect, it could have no practical

operation.”⁸² This represents the prevailing, and it would seem the better, doctrine.

But it is strongly and forcibly urged on the other side that since the corporation can acquire a right by its acts done in the State only by consent of the laws of the State, and since it is admitted to do business in the State only by comity, it can acquire no legal rights in the State through an act done in violation of the laws of the State. “The [foreign] bank then has no power to make a contract within this State without its permission or assent. If the State is silent on the subject, by the comity of nations, its permission is presumed, unless it would be contrary to its policy or interest. But the State has spoken on the subject and given its consent to the transaction of business within its jurisdiction by the bank, not absolutely, but upon a condition or a limitation. . . . It follows, of course, from these premises, that the bank had no power to contract in the State until it had complied with the terms upon which the permission to do business was granted. It was required to perform the condition *before* it transacted business. . . . This act, being mandatory, is therefore a prohibition against the transaction of business by the bank in this State without first complying with its terms, and as a necessary consequence all acts done in violation of it are illegal and void.”⁸³

This difference of opinion is partly due to some special provisions of the statutes in question;⁸⁴ but statutory differences are not sufficient to account for the conflict of decision. It must be recognized that courts have taken opposite views on the general question.

It will be noticed that under the retaliatory act in force in several States, a contract made before compliance will be unenforceable, no matter what the view held by the courts of

⁸² Gray, J., in *Neuchatel Asphalte Co. v. New York*, 155 N. Y. 373, 377, 49 N. E. 1043.

⁸³ Deady, J., in *In re Comstock*, 3 Sawyer, 218, Fed. Cas. No. 3077.

⁸⁴ See *s. g.* *Northwestern M. L. I. Co. v. Overholt*, 4 Dill. 287, Fed. Cas. No. 10338; *C. B. Rogers & Co. v. Simmons*, 155 Mass. 259, 29 N. E. 580.

the State, if by the courts of the State of charter that view is held.⁸⁵

§ 213. Authorities holding the transaction valid.

The weight of authority supports the view that contracts made by the foreign corporation within the State before compliance with the statute are not void, and that suit may be brought upon them either by the other party or (after compliance, if that is, as often happens, made a condition of suing) by the corporation.⁸⁶

In accordance with this doctrine, it is held that in spite of non-compliance with the statute suit may be brought on the contract in the courts of another State,⁸⁷ or in the Federal courts.⁸⁸

⁸⁵ *Wolf v. Lancaster*, (N. J. L.) 56 Atl. 172.

⁸⁶ *Northwestern M. L. I. Co. v. Overholt*, 4 Dill. 287, Fed. Cas. No. 10338; *Goddard v. Crefield Mills*, 75 Fed. 818; *Sullivan v. Beck*, 79 Fed. 200; *Jarvis-Conklin M. T. Co. v. Willhoit*, 84 Fed. 514; *Sherwood v. Alvis*, 83 Ala. 115, 3 So. 307, 3 A. S. R. 695; *Boyington v. Van Etten*, 62 Ark. 63, 35 S. W. 622 (*semble*); *Sutherland-Innes Co. v. Chaney*, (Ark.) 80 S. W. 152; *Kindel v. Beck & P. L. Co.*, 19 Colo. 310, 35 Pac. 538, 24 L. R. A. 311; *Rockford Ins. Co. v. Rogers*, 9 Colo. App. 121, 47 Pac. 848; *Helvatia S. F. I. Co. v. Edward P. Allis Co.*, 11 Col. App. 264, 53 Pac. 242; *Watertown F. I. Co. v. Rust*, 41 Ill. 85, 30 N. E. 772; *Security S. & L. Assoc. v. Elbert*, 153 Ind. 198, 54 N. E. 753; *North Mercer N. G. Co. v. Smith*, 27 Ind. App. 472, 61 N. E. 10; *State v. American Book Co.*, (Kan.) 76 Pac. 411; *C. B. Rogers & Co. v. Simmons*, 155 Mass. 259, 29 N. E. 580; *Enterprise Brewing Co. v. Grime*, 173 Mass. 252, 53 N. E. 855; *People v. Hawkins*, 106 Mich. 479, 64 N. W. 736 (*semble*); *Hart v. Livermore F. & M. Co.*, 72 Miss. 809, 17 So. 769; *Columbus Ins. Co. v. Walsh*, 18 Mo. 229; *Chicago, M. & L. Co. v. Sims*, (Mo. App.) 74 S. W. 128; *King v. National M. & E. Co.*, 4 Mont. 1, 1 Pac. 727 (changed by express provision of statute, *Powder R. C. Co. v. Comrs.*, 9 Mont. 145, 22 Pac. 383; *Neuchatel Asphalte Co. v. New York*, 155 N. Y. 373, 49 N. E. 1043 (superseded by statute, see *ante*, § 173); *Union M. L. I. Co. v. McMillen*, 24 Oh. S. 67; *Wright v. Lee*, 2 S. D. 596, 51 N. W. 706; *Dearborn Foundry Co. v. Augustine*, 5 Wash. 67, 31 Pac. 327; *Huttig Bros. Mfg. Co. v. Denny Hotel Co.*, 6 Wash. 122, 32 Pac. 1073; *Edison G. E. Co. v. Canadian P. N. Co.*, 8 Wash. 370, 36 Pac. 260, 24 L. R. A. 315, 40 A. S. R. 910; *Whitman Agricultural Co. v. Strand*, 8 Wash. 647, 36 Pac. 682; *La France F. E. Co. v. Mt. Vernon*, 9 Wash. 142, 37 Pac. 287, 43 A. S. R. 827; *Toledo T. & L. Co. v. Thomas*, 33 W. Va. 566, 11 S. E. 37, 25 A. S. R. 925.

⁸⁷ *Allegheny Co. v. Allen*, (N. J. L.) 55 Atl. 724.

⁸⁸ *Sullivan v. Beck*, 79 Fed. 200.

The same doctrine is held as to other transactions. Thus mortgage or trust deeds taken by corporations before complying with the statutes are not void;⁸⁹ and on subsequent compliance with the statute are good as from the date of making.⁹⁰

The same holds true of other securities taken by a corporation.⁹¹ So titles to land acquired by foreign corporations by purchase are valid;⁹² and titles given on foreclosure of mortgages to foreign corporations are likewise valid.⁹³

§ 214. Authorities holding the transaction void.

On the other hand, there is much respectable authority to the effect that the acts of the corporation give rise to no rights, even as against the corporation, when such acts were the making of contracts⁹⁴ or the taking of a mortgage.⁹⁵ In such

⁸⁹ *Lauter v. Jarvis-Conklin Mtg. Trust Co.*, 85 Fed. 894; *Miller v. Williams*, 27 Colo. 34, 59 Pac. 740 (*semble*); *Spinney v. Miller*, 114 Iowa, 210, 86 N. W. 317, 89 A. S. R. 351 (*semble*); *Mutual Benefit Life Ins. Co. v. Winne*, 20 Mont. 20, 49 Pac. 446.

⁹⁰ *Guarantee & Trust Co. v. Jones*, 103 Tenn. 245, 58 S. W. 219.

⁹¹ *Lauter v. Jarvis-Conklin Mtg. Trust Co.*, 85 Fed. 894; *Hart v. Livermore Foundry & Mach. Co.*, 72 Miss. 809, 17 So. 769.

⁹² *Chattanooga R. & C. R. R. v. Evans*, 66 Fed. 809. This is so though the officers of the corporation are subject to penalties for taking title. *Middis v. Kenney*, (Mo.) 75 S. W. 633.

⁹³ *Gamble v. Caldwell*, 98 Ala. 577, 12 So. 424; *Shahan v. Tethero*, 114 Ala. 404, 21 So. 951; *Electric Lighting Co. v. Rust*, 117 Ala. 680, 23 So. 751; *Miller v. Gates*, 22 Mont. 305, 56 Pac. 356.

⁹⁴ *In re Comstock*, 3 Sawy. 218, Fed. Cas. No. 3077; *Semple v. Bank of British Columbia*, 5 Sawy. 88, Fed. Cas. No. 12659; *McCanna & Fraser Co. v. Citizens' Trust & Surety Co.*, 76 Fed. 420, and note in 24 C. C. A. 13; *Oakland Sugar Mill Co. v. Fred W. Wolf Co.*, 118 Fed. 239 (*semble*); *Rough v. Breitung*, 117 Mich. 48, 75 N. W. 147; *Hoskins v. Rochester Sav. & Loan Ass.*, (Mich.) 95 N. W. 566; *Henni v. Fidelity Building & Loan Ass.*, 61 Neb. 744, 86 N. W. 475, 87 A. S. R. 519; *Bank of British Columbia v. Page*, 6 Ore. 431; *Thorne v. T. Ins. Co.*, 80 Pa. 15; 21 A. R. 89; *Mutual B. L. I. Co. v. Bales*, 92 Pa. 352; *Phoenix S. M.*

⁹⁵ *Illinois Bldg. & Loan Ass. v. Walker*, (Tenn. Ch. App.) 42 S. W. 191; *U. S. Nat'l Bldg. & Loan Ass. v. Cannon*, 99 Tenn. 344, 41 S. W. 1054. As the mortgage was regarded as wholly void and of no effect, a bill would not lie in Tennessee to cancel such mortgage as a cloud on title. *N. Y. Nat'l Bldg. & Loan Ass. v. Cannon*, 99 Tenn. 344, 41 S. W. 1054.

jurisdiction, notes given to foreign corporations are wholly void.⁹⁶

In Alaska, by express provision of the statute, a contract made by a foreign corporation before compliance is voidable by the other party. If the other party does not seasonably avoid it and return the consideration, the corporation after compliance with the statute may sue on the contract.⁹⁷

If the contract is void, a *bona fide* assignee cannot sue on it;⁹⁸ and even if the contract is valid, if the corporation, not having complied with the statute, cannot bring suit its mere assignee cannot sue.⁹⁹

Though the contract was void, if it has been executed the matter cannot be reopened at the suit of either party. So where the agent of a foreign insurance company paid a premium for the defendant and took defendant's note to himself personally for the amount, he could recover on the note without showing that the company had complied with the statute; for the entire transaction in which the corporation was concerned had been executed.¹⁰⁰

§ 215. Penalty for non-compliance.

Even if the State does not deprive of effect acts by foreign corporations before compliance with the law, a State may and

Co. v. Reilly, 187 Pa. 526, 41 Atl. 523; Cary-Lombard L. Co. v. Thomas, 92 Tenn. 587, 22 S. W. 743; Myers Mfg. Co. v. Wetzel, (Tenn. Ch.) 35 S. W. 896; Ashland Lumber Co. v. Detroit Salt Co., 114 Wis. 66, 89 N. W. 904. In Arkansas, under a form of statute recently modified, the contract was void as against a citizen of the State, but not as against a foreigner or another foreign corporation. St. Louis, A. & T. Ry. v. Fire Assoc., 60 Ark. 325, 30 S. W. 350. In Massachusetts, while the contract was held valid under the earlier statute, it is void under the present statute regulating foreign insurance companies. Reliance M. I. Co. v. Sawyer, 160 Mass. 413, 36 N. E. 59; Baldwin v. Conn. M. L. I. Co., 182 Mass. 389, 65 N. E. 837.

⁹⁶ First Nat. Bank v. Coughron, (Tenn. Ch.) 52 S. W. 1112; Ætna Insurance Co. v. Harvey, 11 Wis. 394.

⁹⁷ Ames v. Kruzner, 1 Alaska, 598.

⁹⁸ First Nat. Bank v. Coughron (Tenn. Ch.), 52 S. W. 1112.

⁹⁹ Kinney v. Reid Ice Cream Co., 57 App. Div. 206, 68 N. Y. S. 325.

¹⁰⁰ Russell v. Jones, 101 Ala. 261, 13 So. 145.

nearly all States do impose some penalty or personal liability on the officers or agents of foreign corporations, who act for them within the State.¹⁰¹ And in Pennsylvania it has been held that the agent is liable personally at common law to the party with whom he deals on an implied warranty of authority.¹⁰² It must be clear too that when the penalties are statutory, subsequent compliance with the statute does not relieve the agent from the infliction of the penalty.¹⁰³

§ 216. Legal proceedings upon non-compliance.

Just as usurpation or abuse of privileges by domestic corporations may be inquired into by the State in *quo warranto* proceedings, so compliance with the conditions precedent to doing business imposed on foreign corporations may be inquired into by *quo warranto*; ¹⁰⁴ and for subsequent violation of State laws ouster may be brought about in the same way.¹⁰⁵

The issuance of a license being a ministerial act is not a bar to *quo warranto* proceedings.¹⁰⁶ Whether failure to comply with State statutes may be made the basis of proceedings other than by *quo warranto*, is a point on which the practice of the several States is not in accord. Thus it has been held

¹⁰¹ *Lauter v. Jarvis-Conklin Mtg. Trust Co.*, 85 Fed. 894; *Collier v. Davis*, 94 Ala. 456, 10 So. 86; *Kindel v. Beck & Pauli Lith. Co.*, 13 Colo. 310, 35 Pac. 538; *Sims v. Com.*, 24 Ky. L. Rep. 1591, 71 S. W. 929; *Kelley v. Rice-Blake Lumber Co.*, 167 Mass. 28, 44 N. E. 1090; *Heard v. Pictorial Press*, 182 Mass. 530, 65 N. E. 901; *M. I. Wilcox Cordage & Supply Co. v. Mosher*, 114 Mich. 64, 72 N. W. 117; *Novelty Mfg. Co. v. Connell*, 34 N. Y. S. 717, 88 Hun, 254; *Cox v. Island Mining Co.*, 73 N. Y. S. 61, 65 App. Div. 508.

¹⁰² *Lasher v. Stimson*, 145 Pa. 30, 23 Atl. 552.

¹⁰³ *Vorys v. State*, 67 Ohio St. 15, 65 N. E. 50; see also *Knoxville Nursery Co. v. Com.*, 21 Ky. L. Rep. 1483, 55 S. W. 691.

¹⁰⁴ *State v. Am. Book Co.*, 65 Kan. 847, 69 Pac. 563; *Union Trust Co. v. Atchison, T. & S. F. R. R.*, 8 N. M. 327, 43 Pac. 701; *State v. Fidelity & Casualty Co.*, 49 Oh. St. 440, 31 N. E. 658, 34 A. S. R. 573; *Wright v. Lee*, 4 S. D. 237, 55 N. W. 931.

¹⁰⁵ *State v. Standard Oil Co.*, 61 Neb. 28, 84 N. W. 413, 87 A. S. R. 449.

¹⁰⁶ *State v. Fidelity & Casualty Ins. Co.*, 49 Oh. St. 440, 31 N. E. 658, 34 A. S. R. 573.

that proceeding by *quo warranto* is exclusive;¹⁰⁷ while in some States proceeding by injunction has been allowed.¹⁰⁸

No private person can institute proceedings based on a failure of the foreign corporation to comply with the provisions of the statute.¹⁰⁹

¹⁰⁷ *Union Trust Co. v. Atch. T. & S. F. R. R.*, 8 N. M. 327, 43 Pac. 701.

¹⁰⁸ *State v. Standard Oil Co.*, 61 Neb. 28, 84 N. W. 413, 34 A. S. R. 573; *Wright v. Lee*, 4 S. D. 237, 55 N. W. 931.

¹⁰⁹ *MacGinniss v. Boston & M. C. C. & S. M. Co.*, (Mont.) 75 Pac. 89.

CHAPTER IX.

DEALING WITH PROPERTY.

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| <p>§ 221. The power to take and hold property.
222. Power limited by charter.
223. Prohibition by the State of <i>situs</i>.
224. Conditions precedent to doing business.
225. Mortmain Acts.
226. Taking real estate.</p> | <p>§ 227. Taking by way of security.
228. Taking by devise or bequest.
229. Taking by eminent domain.
230. Taking personal property.
231. Protecting a name.
232. Exercising a franchise.
233. Taking in trust.
234. Conveying property.</p> |
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§ 221. The power to take and hold property.

In order that the title of property may pass to and be held by any person, the proper law must confer on him power to take, and the law that controls the property must pass the title to it.

The power to take property must be conferred, in the case of a corporation, by the law that created it. But unless the power is expressly withheld it will be regarded as conferred; for the power to take and hold property is a power inherent in a corporation as in an individual. No special grant of power for the purpose is required either in the charter or from the State in which the property is acquired and held.

The law that controls property is the law of its *situs*; and that law may forbid a foreign corporation to hold.

§ 222. Power limited by charter.

As has been seen, the capacity to take and hold property is one of the ordinary legal incidents of incorporation; though no express provision on the subject is made in the charter, the capacity nevertheless exists.¹ But after all the corporation

¹ Russell v. Topping, 5 McLean, 194, Fed. Cas. No. 12,163 (*semble*); Lan-
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must derive its right to acquire property from its charter, and a corporation which claims the right to hold land must show that it has that power by its charter.²

But there is a fundamental distinction between the right to take and the power to take. It is doubtless possible for a corporation to be created without the power to hold property; but such a corporation has as a matter of fact seldom or never been created. It is not uncommon for a charter to forbid a corporation to hold land; and it may be provided in the general law under which the incorporation takes place that the corporation shall have no power to take land except for specified purposes. But even in such a case the provision is interpreted as affecting the right rather than the power of the corporation to take; and while it would render a contract for the purchase of property *ultra vires*, it will not affect the validity of a conveyance to the corporation.

In short, an express provision in the charter of a corporation against holding land or other property does not affect the power of the corporation to take, but only its right to take as between itself and the State of charter. A deed of land to a corporation under such circumstances is not void; and though the act of the corporation is wrong, the wrong is not to any individual, but to the State, and the State alone can object.

The leading case on this point is *Silver Lake Bank v. North*.³ The bank, a Pennsylvania corporation, brought suit in New York to foreclose a mortgage which it had taken to secure a loan; the transaction being forbidden by its charter. The court said: "Perhaps it would be sufficient for this case, that the plaintiffs are a duly incorporated body, with authority to contract and take mortgages and judgments; and if they

caster v. Amsterdam Improvement Co., 140 N. Y. 576, 35 N. E. 964, 24 L. R. A. 322; *Barcello v. Hapgood*, 118 N. C. 712, 24 S. E. 124; *Page v. Heineberg*, 40 Vt. 81, 94 A. D. 378.

² *State v. Hudson Land Co.*, 19 Wash. 85, 52 Pac. 574.

³ 4 Johns. Ch. (N. Y.) 370.

should pass the exact line of their power, it would rather belong to the government of Pennsylvania to exact a forfeiture of their charter, than for this court in this collateral way to decide a question of misuser, by setting aside a just and *bona fide* contract.”⁴ This case has been generally followed.⁵

If this is true where the corporation is absolutely forbidden to take property, *a fortiori* when the prohibition is only partial the State of charter alone can enforce it. Frequently a charter will contain permission to hold a certain amount of real estate,⁶ or to a fixed annual value,⁷ or for prescribed purposes,⁸ commonly, such as is necessary for the transaction of the business of the corporation. The natural implication might seem to be that no power is conferred to hold otherwise than so provided. No objection, however, to the holding of land by the corporation to a greater value or for another purpose can be made collaterally, or by any person not acting for the State.⁹

In *Cowell v. Springs Co.*¹⁰ the Supreme Court of the United

⁴ This was quoted though somewhat doubtfully by Mr. Justice Swayne in *Nat. Bank v. Matthews*, 98 U. S. 621, 25 L. ed. 188. A statute of the United States prescribes the purposes for which a national bank may hold real estate—“A national bank may purchase, hold and convey real estate for the following purposes and for no others.” It was assumed that the transaction was included within none of the prescribed purposes; yet the security—a deed of trust with power of sale—was held valid, since the act provided other penalties. *Fowler v. Scully*, 72 Pa. 456, 13 A. R. 699, a contrary decision on the same point, must be regarded no longer sound.

⁵ *United States Mtg. Co. v. Sperry*, 24 Fed. 838; *O'Brien v. Wetherell*, 14 Kan. 616, 621; *Myers v. McGavock*, 39 Neb. 843, 58 N. W. 522, 42 A. S. R. 627; *Watts v. Gantt*, 42 Neb. 869, 61 N. W. 104; *Lancaster v. Amsterdam Improvement Co.*, 140 N. Y. 576, 35 N. E. 964, 24 L. R. A. 322.

⁶ *Whitman Mining Co. v. Baker*, 3 Nev. 386; *Amer. Mtg. Co. v. Tennille*, 87 Ga. 28, 13 S. E. 158, 12 L. R. A. 529.

⁷ *Jones v. Habersham*, 107 U. S. 174, 27 L. ed. 401.

⁸ *Russell v. Topping*, 5 McLean, 194, Fed. Cas. No. 12,163.

⁹ *Jones v. Habersham*, 107 U. S. 174, 27 L. ed. 401; *Natoma Water & Mining Co. v. Clarkin*, 14 Cal. 544; *American Mtg. Co. v. Tennille*, 87 Ga. 28, 13 S. E. 158, 12 L. R. A. 529; *Hough v. Cook Co. Land Co.*, 73 Ill. 23, 24 A. R. 230; *Alexander v. Tolleston Club*, 110 Ill. 65; *Barnes v. Suddard*, 117 Ill. 237, 7 N. E. 477; *Chicago, B. & Q. R. R. v. Lewis*, 53 Ia. 101, 4 N. W. 842; *Taylor v. Trust Co.*, 71 Miss. 694.

¹⁰ 100 U. S. 55, 25 L. ed. 547.

States said: "Whether the particular premises in controversy are necessary for that business is not important; that is a matter between the government of the State and the corporation, and is no concern of the defendant. It would create great inconveniences and embarrassments if, in actions by corporations to recover the possession of their real property, an investigation was permitted into the necessity of such property for the purposes of their incorporation and their title made to rest upon proof of that necessity."

This doctrine appears to have been neglected in an early case in Illinois. The charter of a foreign corporation provided that all conveyances of land should be executed to it in the name of one of its officers. It was held that a conveyance of land to it in its corporate name was absolutely void.¹¹ The effect of this decision is probably modified by subsequent decisions which will be considered later.

§ 223. Prohibition by the State of situs.

While the power of the corporation to take and hold property must be derived from its charter, it can acquire property only in accordance with the law of the situs of the property. It is, therefore, possible for the State where land is situated to forbid the holding of land by a foreign corporation. The common law, indeed, permits the holding, unless perhaps in a case where it is regarded as against public policy for the corporation to hold land; and as has been seen the fact that no domestic corporation is empowered to hold land, or to acquire it for certain purposes, does not of itself indicate such a public policy on the subject that the court without the aid of a statute can declare the holding illegal.¹² It has, however, been held in Pennsylvania that a foreign corporation permitted by the laws of its charter State to lease non-connecting lines, will not in Pennsylvania be allowed to do so in the absence

¹¹ *Metropolitan Bank v. Godfrey*, 23 Ill. 579.

¹² *Ante*, § 113.

of a Pennsylvania statute allowing it to domestic corporations.¹³

If a State desires to restrain foreign corporations from taking or holding land it must do so by statute. Its power to accomplish this purpose by statute is, generally speaking, unlimited; though the right of a State to prohibit the holding of land by a foreign corporation may be restrained by the Constitution of the United States.¹⁴ The same result may be reached in the case of a foreign country by a treaty. Thus the treaty between this country and England prevented the forfeiture of land in this country held by English corporations.¹⁵

Statutes are sometimes passed limiting the powers of a foreign corporation to take land; or, more frequently, defining the purposes for which it may take land. Thus, express permission may be given by statute to hold so much as may be necessary for business purposes; or so much as similar domestic corporations can hold. When there is such a restriction upon the right of the corporation to hold land, the State alone can object if the corporation exceeds its right; and even if all foreign corporations are forbidden to take land, the only remedy is an action by the State. Private individuals, whether claiming under the corporation's grantor or otherwise, cannot object.¹⁶ This is even clearer than the case of limitation in the charter upon the right to take property; for in this case there can be no question of the power of the corporation to acquire the property, and the only obstacle to its holding the land lies in the action of the State.

¹³ *Van Steuben v. Cent. R. R. of N. J.*, 178 Pa. 367, 35 Atl. 992, 34 L. R. A. 577.

¹⁴ *Ante*, Chapter VI.

¹⁵ *Society for the Propagation of the Gospel v. New Haven*, 8 Wheat. 464, 5 L. ed. 662.

¹⁶ *Seymour v. Slide & Spur Gold Mines*, 153 U. S. 523, 38 L. ed. 807; *Carlow v. Aultman*, 28 Neb. 672, 44 N. W. 873; *Whitman Mining Co. v. Baker*, 3 Nev. 386; *People v. Mauran*, 5 Denio (N. Y.), 389; *Leazure v. Hillegas*, 7 S. & R. (Pa.) 313; *Baird v. Washington*, 11 S. & R. (Pa.) 411; *Galveston Land, etc., Co. v. Perkins*, (Tex. Civ. App.) 26 S. W. 256.

But where a foreign corporation holding land in compliance with such permission attempts to dispose of it for a purpose contrary to the public policy of the State, a bill will lie by a resident stockholder to restrain such sale.¹⁷

The question has received more attention in Illinois than in any other State. The first decision was *Carroll v. East St. Louis*.¹⁸ This was an action of ejectment and the city claimed under a deed from the Connecticut Land Company, a corporation of Connecticut formed for the purpose of dealing in land. The court decided that it was contrary to the public policy of the State to allow lands to be held by such a corporation, and that the corporation took no title and could convey none to the city. This decision was followed in *Starkweather v. American Bible Society*,¹⁹ where the court declared void a devise to a foreign religious corporation; also in *United States Trust Co. v. Lee*,²⁰ which decided that a foreign corporation could not take as trustee under a will. But in later decisions²¹ the court has rather receded from the position taken in these last two cases, and now probably *Carroll v. East St. Louis* would be construed strictly to mean merely that comity forbids a foreign corporation formed for the express purpose of dealing in land to hold tracts as a speculative investment, and that otherwise foreign corporations may, by comity, hold real estate as authorized by their charters.²²

The constitution of Nebraska declares, "No railway corporation organized under the laws of any other State, or of the United States, and doing business in this State, shall be entitled to exercise the right of eminent domain . . . until it shall have become a body corporate pursuant to and in accordance with the laws of this State." Under this provision

¹⁷ *Harding v. Am. Glucose Co.*, 182 Ill. 551, 55 N. E. 577, 74 A. S. R. 189.

¹⁸ 67 Ill. 568, 16 A. R. 632.

¹⁹ 72 Ill. 50, 22 A. R. 133.

²⁰ 73 Ill. 142, 24 A. R. 236.

²¹ *Stevens v. Pratt*, 101 Ill. 206; *Commercial U. Ins. Co. v. Scammon*, 102 Ill. 46; *Santa Clara Female Academy v. Sullivan*, 116 Ill. 375, 6 N. E. 183.

²² *Christian Union v. Yount*, 101 U. S. 352, 25 L. ed. 888.

the court held that the Chicago, Burlington & Quincy Railway, a foreign corporation, could not take as lessee.²³ "It cannot do by indirection what it is absolutely prohibited from doing directly." With a similar state of facts, the directly contrary conclusion was reached in Iowa.²⁴ There a foreign corporation organized a domestic corporation out of its own stockholders for the express purpose of condemning a right of way for the foreign corporation. This was held to be legal. The question in each case was the interpretation of the domestic Constitution and a declaration of the public policy of the State; and it is not surprising that a difference of opinion should exist. But since in each case the title to the land is in a domestic corporation, and therefore under the complete control of the State, the policy of the Constitution seems not to be violated, and the Iowa decision is preferable.

One or two decisions which are more or less opposed to the great current of authority require notice. Thus where the State Bank of Illinois was given power in its charter to hold land for specified purposes, and forbidden to purchase, hold or convey, land in any other case or for any other purpose, it was held that the conveyance to the bank of land for another purpose was void and passed no title.²⁵ And in one case the Supreme Court of the United States refused to assist a corporation in *gaining possession* of land fraudulently appropriated by its officers, it appearing that the corporation had no power to hold for such purposes.²⁶ The doctrine of this case is a

²³ *State v. Scott*, 22 Neb. 628, 36 N. W. 121. See *Ogden v. Murray*, 39 N. Y. 202; *Koenig v. Chicago, B. & Q. R. R.*, 27 Neb. 699, 43 N. W. 423.

²⁴ *Lower v. Chicago, B. & Q. Ry.*, 59 Ia. 563, 13 N. W. 718.

²⁵ *Russell v. Topping*, 5 McLean, 194, Fed. Cas. No. 12,163.

²⁶ *Case v. Kelley*, 133 U.S. 21, 33 L. ed. 513. Miller, J., said: "The question here is, not whether the courts would deprive it of such lands if they had been conveyed to it, but whether they will aid it to violate the law and obtain a title which it has no power to hold. We think the questions are very different ones, and that while a court might hesitate to declare the title to lands received already, and in their possession and ownership void, on the principle that they had no authority to take such lands, it is very clear that it will not make itself the active agent in behalf of the company

novel one, and is inconsistent with several of the earlier cases, where the corporation was allowed to recover the land from a disseisor.²⁷ It is hardly likely to be followed.

As no third party can object to the illegality of the taking by a corporation, still less can the grantor object. Whatever the ultimate fate of the land, it is clearly not to revert to the grantor, who has transferred all his rights, legal and equitable.²⁸ This is sometimes said to be due to the fact that a grantor is estopped to deny his grantee's capacity;²⁹ but the better view seems to be that first expressed, that the corporation has in the nature of things the capacity of taking property, even though the State has forbidden it to exercise its power.

If the State alone can object to a holding of land *ultra vires*, it would seem *a fortiori* that one tracing title from a corporation need not put in evidence the powers of the corporation to hold, and it has so been held.³⁰ Along the same line it was held that if a corporation takes land for purposes of charter, on abandonment for such purposes it does not revert.³¹ And where a corporation, being forbidden to acquire land, secured the conveyance to one as trustee for its benefit, the trustee could not repudiate the trust.³²

The objections of a State to a foreign corporation holding land are usually two; the undesirability of an accumulation of land in the ownership of corporations, and especially of corporations which derive their powers from a foreign State

in violating the law and enabling the company to do that which the law forbid."

²⁷ *Cowell v. Springs Co.*, 100 U. S. 55, 25 L. ed. 547; *Chicago, B. & Q. R. R. v. Lewis*, 53 Ia. 101, 4 N. W. 842.

²⁸ *Ray v. Home & Foreign I. & A. Co.*, 98 Ga. 122, 26 S. E. 56; *Alexander v. Tolleston Club*, 110 Ill. 65; *Barnes v. Suddard*, 117 Ill. 237, 7 N. E. 477; *Brown v. Phillips*, 16 Ia. 210; *Leasure v. Union Mut. Life Ins. Co.*, 91 Pa. 491.

²⁹ *Snyder v. Studebaker*, 19 Ind. 462.

³⁰ *Lancaster v. Amsterdam Improvement Co.*, 140 N. Y. 576, 35 N. E. 964, 24 L. R. A. 322; *Tarpley v. Deeseret Salt Co.*, (Utah) 17 Pac. 631. *Contra Young v. Milne*, 28 New Br. 186.

³¹ *Page v. Heineberg*, 40 Vt. 81, 94 A. D. 378.

³² *Fisk v. Patton*, 7 Utah, 399, 27 Pac. 1.

and are in no way responsible to the State of situs; and the policy against having a foreign corporation do any act within the State until it so far submits itself to the power of the State as to be made responsible for its act. The statutory restrictions most commonly made are that a foreign corporation shall not do an act such as acquiring land until it has complied with the provisions for the registration of foreign corporations, and that it shall not take land by devise.

§ 224. Conditions precedent to doing business.

In every State are statutes requiring certain things of a foreign corporation as conditions precedent to doing business,—a regular place of business is required, an authorized agent, or the deposit of a copy of the charter. If a deed is given to a foreign corporation before complying with these requirements, What effect is to be given to it? The constitution of Alabama declares, “No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein.” Disregarding this prohibition the New York Mortgage Company took a mortgage and sold the land under a power of sale. The court held that the corporation passed a good title. “The penalties inflicted are the only consequences of disregarding the constitutional provision.”³³ But a few years later the same court reached a seemingly opposite conclusion. A declaration which did not aver that the company had complied with the requirements of the constitution at the time the mortgage was taken was held demurrable.³⁴

This is evidently a question of the construction to be placed upon a statute. If the statute is interpreted as declaring void

³³ *Sherwood v. Alvis*, 83 Ala. 115.

³⁴ *Farrior v. N. E. Mtg. Co.*, 88 Ala. 275, 7 So. 200. The question was, however, not quite the same; the action was to foreclose the mortgage, and the question involved was rather the validity of the debt than the title to land, which in fact depended upon the validity of the mortgage debt. And compare with this case *Boulware v. Davis*, 90 Ala. 207, 8 So. 84, 9 L. R. A. 601.

all transactions before the requirements are complied with, there can be no question; for the State has undoubted power to accomplish such a result. But a statute is seldom, if ever, so explicit; and four views have been taken as to the effect of non-compliance with the statute upon the power to hold land. First, that the title is wholly void.³⁵ Second, that the title is good, but the courts will not lend their assistance to the holder of it until the statute is complied with.³⁶ Third, that the title is good unless the State objects, and forfeits the land by direct proceedings for that purpose.³⁷ Fourth, that the title is unaffected by non-compliance.³⁸ It is doubtful whether this view really differs from the third.

So far as the title to real estate goes, there can hardly be a doubt that the third view is better, as more in accordance with the analogies, and that it will prevail, even in States where a contract made by the corporation under such circumstances is held void. The contract is an executory obligation, but the conveyance is executed; and there seems no valid reason for a distinction between a prohibition to hold land except for a certain purpose, and a prohibition to hold it until after compliance with a condition.

Whatever be the view generally taken it would seem to be clear that, if the foreign corporation held land before the passage of the statute, it could, if authorized to do business in the

³⁵ *Semple v. Bank of British Columbia*, 5 Sawy. 88, Fed. Cas. No. 12,659. This, like the Alabama case just cited, is a suit to foreclose a mortgage, and the question involved was the validity of the note. Probably no jurisdiction holds this view in case of an absolute conveyance. See *Williams v. Bank of Commerce*, 71 Miss. 858, 16 So. 238.

³⁶ *W. A. Wood M. Machine Co. v. Caldwell*, 54 Ind. 270, 23 A. R. 641; *Daly v. Nat. Life Ins. Co.*, 64 Ind. 1. This too seems to apply only to the case of a mortgage. See *Smith v. Little*, 67 Ind. 549.

³⁷ *Fritts v. Palmer*, 132 U. S. 282, 33 L. ed. 317; *McKinley-Lanning Loan & Trust Co. v. Gordon*, 113 Iowa, 481, 85 N. W. 816; *Carlow v. Aultman*, 28 Neb. 672, 44 N. W. 873.

³⁸ *N. W. Mut. Life Ins. Co. v. Overholt*, 4 Dill. 287, Fed. Cas. No. 10,338; *Hamilton v. Reeves*, (Kan.) 76 Pac. 418; *Garfield M. & M. Co. v. Hammer*, 6 Mont. 53; *Lakeview Land Co. v. San Antonio Traction Co.*, 95 Tex. 252, 66 S. W. 766.

State, make a valid sale of the property without complying with the provisions of the statute as to corporations holding land.³⁹ And when a State statute gives a foreign railroad company power to extend its road into the State a distance of five miles to a terminal depot, and the power to acquire right of way to such terminal, it will be allowed so to do though a subsequent section of the same statute giving power to purchase real estate generally requires compliance with State laws before the purchase.⁴⁰

These statutes have been considered as to their effect upon the doing of business generally.⁴¹

§ 225. Mortmain Acts.

By what is known as the Pennsylvania Mortmain Act,⁴² it is declared that "no corporation other than such as shall have been incorporated under the laws of this State shall hereafter acquire and hold any real estate within this Commonwealth directly in the corporate name, or by or through any trustee or other devise whatsoever, unless specially authorized to hold such property by the laws of this Commonwealth."

In 1824 the Supreme Court of Pennsylvania, construing the mortmain act then in force and similar in its provisions to the acts of 1855, held that a deed to land taken in violation of this act is not void but subject to defeasance on the part of the Commonwealth; and until the Commonwealth takes action for this purpose, the corporation may deal with the land as it pleases.⁴³ This construction was followed by the Supreme Court of the United States in *Runyan v. Coster*.⁴⁴ The statute of 1855 has been treated in the same way.⁴⁵

³⁹ *Chattanooga, R. & C. R. R. v. Evans*, 66 Fed. 809 (C. C. A.).

⁴⁰ *Chattanooga, etc., R. R. v. Evans*, 66 Fed. 809.

⁴¹ *Ante*, Chapter VIII.

⁴² Act of April 26, 1855 (P. L. 329).

⁴³ *Leasure v. Hillegas*, 7 S. & R. (Pa.) 313; *Baird v. Washington*, 11 S. & R. (Pa.) 411.

⁴⁴ 14 Pet. 122, 10 L. ed. 382.

⁴⁵ *Hickory Farm Oil Co. v. B. N. Y. & P. R. R.*, 32 Fed. 22; *Grant v.*

Under this act the State may by proper proceedings declare the land escheated. In *Commonwealth v. New York, Lake Erie & Western Railroad*,⁴⁶ the court held that a foreign corporation could not (as against the State) keep land which had been taken in the name of a domestic corporation. It was an action of *quo warranto* to escheat the land so held to the State. The court said that if the domestic corporation was used as "a mere repository of the legal title" the land was held by such a device as was forbidden by the act. But this decision was later reversed, and it was held that, the ownership of the stock of the local corporation being permitted by law, the device was a legal one, and the land could be retained by the domestic corporation.⁴⁷

The Pennsylvania act has been inclusively interpreted, as both affecting the power of the corporation to take and the legality of the conveyance. It has been held to make void a devise of land in New York to a Pennsylvania corporation,⁴⁸ and a devise of land in Pennsylvania to a foreign corporation.⁴⁹ But the doctrine of *cy pres* is held to apply, and if the devise is for a charity a trustee will be appointed to preserve it.⁵⁰

The New York statute of wills provides that no devise of land to a corporation shall be valid unless the corporation is empowered to take by devise by its charter.⁵¹ A devise to the city of St. Louis for benevolent purposes was held invalid, no capacity to take by devise being shown in its charter.⁵² In *White v. Howard* ⁵³ the court said it was not enough the

Henry Clay Coal Co., 80 Pa. 208; *Leasure v. Union Mut. Life Ins. Co.*, 91 Pa. 491.

⁴⁶ 114 Pa. 340, 7 Atl. 756.

⁴⁷ 132 Pa. 591, 139 Pa. 457, 19 Atl. 291, 7 L. R. A. 634; *acc.* *White v. Ryan*, 15 Pa. Co. Ct. 170.

⁴⁸ *Kerr v. Dougherty*, 79 N. Y. 327 (two judges dissenting, *et quare*).

⁴⁹ *Com. v. New York, L. E. & W. R. R.*, 114 Pa. 340, 7 Atl. 756 (not reversed on this point).

⁵⁰ *Frazier v. St. Luke's Church*, 10 Pa. Co. Ct. 53.

⁵¹ See this act discussed *ante*, § 5.

⁵² *Boyce v. St. Louis*, 29 Barb. (N. Y.) 650.

⁵³ 46 N. Y. 144.

charter permitted it to take by devise; the legislature of New York must have conferred the power. Even a statute conferring the power to take would be ineffectual if passed after the devise had been made.⁵⁴ Following these decisions Mr. Justice Field, delivering the opinion of the court, declared void a devise of land in New York to the United States government to be used in paying the national debt.⁵⁵

But it was later held that a foreign corporation having power by its charter to take by devise might take land in New York by will; the New York act affecting New York corporations only.⁵⁶ And this decision was recently followed and emphasized, under the General Corporation Law of 1895, and it was held that a devise to a foreign corporation capable by its charter of holding land, was good, though the corporation had not been empowered by the legislature of New York to take land, and the devise had been made within two months of the testator's death.⁵⁷ Conversely, this act will not prevent a New York corporation from taking in another State. The law is one which affects the capacity to devise rather than corporate capacity to take, and it therefore applies only to devises that take effect in New York.⁵⁸

§ 226. Taking real estate.

According to the common law, then, a foreign corporation may hold land,⁵⁹ and may even take land in payment for

⁵⁴ A contrary decision has been given in Massachusetts on a similar point. *Fellows v. Miner*, 119 Mass. 546.

⁵⁵ *United States v. Fox*, 94 U. S. 315, 24 L. ed. 192.

⁵⁶ *Hollis v. Drew Theol. Seminary*, 95 N. Y. 165.

⁵⁷ *In re Lampson's Will*, 161 N. Y. 511, 56 N. E. 9.

⁵⁸ *Thompson v. Swoope*, 24 Pa. 474.

⁵⁹ *Northern Trans. Co. v. Chicago*, 7 Bias. 45, Fed. Cas. No. 10,324; *New Hampshire Land Co. v. Tilton*, 19 Fed. 73; *St. Louis & S. F. R. R. v. Foltz*, 52 Fed. 627; *Blodgett v. Lanyon Zinc Co.*, 120 Fed. 893; *Thompson v. Waters*, 25 Mich. 214, 12 A. R. 243; *Taylor v. Alliance Tr. Co.*, 71 Miss. 694, 15 So. 121; *Missouri L. M. & S. Co. v. Reinhard*, 114 Mo. 218, 21 S. W. 488, 35 A. S. R. 74; *Meddis v. Kenney*, 176 Mo. 200, 75 S. W. 633; *Lumbard v. Aldrich*, 8 N. H. 31; *Lancaster v. Amsterdam Imp. Co.*, 140 N. Y.

stock;⁶⁰ and a foreign corporation having the right to hold land itself for the actual transaction of business may take title in the name of a local auxiliary corporation.⁶¹ And the same thing is true, even if the foreign corporation has no right to hold land, provided it may rightfully hold the stock of the local corporation.⁶²

Title may be acquired by a foreign corporation by lapse of time, through the operation of the Statute of Limitations.⁶³

A foreign corporation may take any other interest in land as well as the fee. Thus, in *Clairemont Bridge v. Royce*,⁶⁴ it was held that the plaintiff, a corporation of New Hampshire, might take from the owner of abutting land in Vermont a grant of the exclusive right of way to the river, and a right to prevent all passageway to the river. The corporation brought trespass relying on this grant and the grant was declared valid by the Supreme Court of Vermont. And there is in fact no reason why a corporation should not take a grant of a valid easement, or any other legal interest in land if it might acquire a fee.

As a foreign corporation may hold in fee or otherwise, it may accept and hold a lease of land for business purposes.⁶⁵ So a railroad has the power at common law to accept the lease of another railroad.⁶⁶ And it may take land on mortgage.⁶⁷

576; 35 N. E. 964, 24 L. R. A. 322; *Hanna v. Petroleum Co.*, 23 Oh. S. 622; *Lakeview Land Co. v. San Antonio Traction Co.*, 95 Tex. 252, 66 S. W. 766; *State v. Boston, C. & M. R. R.*, 25 Vt. 433; *Page v. Heineberg*, 40 Vt. 81, 94 A. D. 378.

⁶⁰ *Brant v. Ehlen*, 59 Md. 1; *Thompson v. Waters*, 25 Mich. 214, 12 A. R. 243.

⁶¹ *Day v. Postal Tel. Co.*, 66 Md. 354.

⁶² *Com. v. New York, L. E. & W. R. R.*, 132 Pa. 591, 139 Pa. 457, 19 Atl. 291, 7 L. R. A. 634; *White v. Ryan*, 15 Pa. Co. Ct. 170.

⁶³ *Lawrence v. Ballou*, 50 Cal. 258; *Myers v. McGavock*, 39 Neb. 843, 58 N. W. 522, 42 A. S. R. 627.

⁶⁴ 42 Vt. 730.

⁶⁵ *Northern Transp. Co. v. Chicago*, 7 Biss. 45, Fed. Cas. No. 10,324; *Steamboat Co. v. McCutcheon*, 13 Pa. 13.

⁶⁶ *Atchison, T. & S. F. R. R. v. Fletcher*, 35 Kan. 236; *Black v. D. & R. Canal Co.*, 22 N. J. Eq. 130.

⁶⁷ *New York Dry Dock v. Hicks*, 5 McLean, 111, Fed. Cas. No. 10,204;

§ 227. Taking by way of security.

Even if a foreign corporation is not allowed to hold land generally, it will be allowed to take a mortgage of real estate for the purpose of securing a *bona fide* debt previously existing; ⁶⁸ the State having power to avoid the evils of a perpetuity by providing for a sale.⁶⁹ Having taken a mortgage on real estate, the foreign corporation may foreclose it on the same terms as any other mortgagee.⁷⁰

The whole law on this point is summed up in *American Mutual Life Insurance Co. v. Owen*,⁷¹ by Mr. Justice Metcalf, as follows: "A foreign corporation having a demand against a citizen of this State, on which an action can be maintained here, may take a mortgage of its debtor's real estate to secure such demand, and may thereby acquire the same rights which appertain to other mortgagees; and such corporation having such demand on such citizen, and recovering judgment thereon, may levy an execution on its judgment debtor's real estate, with all the rights of any other levying creditor."

A foreign corporation may usually purchase at execution

Farmers' Loan & Tr. Co. v. McKinney, 6 McLean, 1, Fed. Cas. No. 4667; *Hards v. Conn. Mut. L. Ins. Co.*, 8 Biss. 234, Fed. Cas. No. 6055; *Stevens v. Pratt*, 101 Ill. 206; *Commercial U. Ins. Co. v. Scammon*, 102 Ill. 46; *Lathrop v. Commercial Bank*, 8 Dana (Ky.), 114, 33 A. D. 481; *Lebanon Savings Bank v. Hollenbeck*, 29 Minn. 322, 13 N. W. 145; *Williams v. Cresswell*, 51 Miss. 817; *Bard v. Poole*, 12 N. Y. 495.

⁶⁸ *Farmers' Loan & Trust Co. v. Chic. & N. P. R. R.*, 68 Fed. 412; *National Trust Co. v. Murphy*, 30 N. J. Eq. 408; *Leasure v. Union Mut. Life Ins. Co.*, 91 Pa. 491; *Charter Oak Life Ins. Co. v. Sawyer*, 44 Wis. 387.

⁶⁹ *United States Mtg. Co. v. Gross*, 93 Ill. 483.

⁷⁰ *Black v. Caldwell*, 83 Fed. 808; *New York Dry Dock v. Hicks*, 5 McLean, 111, Fed. Cas. No. 10,204; *Hards v. Conn. Mut. L. Ins. Co.*, 8 Biss. 234, Fed. Cas. No. 6055; *Life Ins. Co. v. Overholt*, 4 Dill. 287, Fed. Cas. No. 10,338; *Diefenbach v. Vaughan*, 116 Ala. 150, 23 So. 88 (*semble*); *Kindred v. N. E. Mtg. Sec. Co.*, 116 Ala. 192, 23 So. 56 (*semble*); *Lathrop v. Commercial Bank*, 8 Dana (Ky.), 114, 33 A. D. 481; *Amer. Mut. Life Ins. Co. v. Owen*, 15 Gray (Mass.), 491; *Lebanon Savings Bank v. Hollenbeck*, 29 Minn. 322; *Lumbard v. Aldrich*, 8 N. H. 31; *Silver Lake Bank v. North*, 4 Johns. Ch. (N. Y.) 370; *Brown v. Elwell*, 17 Wash. 442, 49 Pac. 1068 (*semble*).

⁷¹ 15 Gray (Mass.), 491, 493.

sales on judgments made in its favor;⁷² and may purchase at any foreclosure or execution sale to protect its own lien *bona fide* acquired.⁷³ A foreign corporation may maintain a real action.⁷⁴

Whether the foreign corporation may maintain foreclosure proceedings until the requirement of the State statute with regard to doing business have been complied with is not clear on the authorities.⁷⁵ But where a foreign corporation as such mortgagee brings suit in a Federal court to foreclose for the benefit of innocent holders, the State will not be allowed to intervene because of violation of State law.⁷⁶

§ 228. Taking by devise or bequest.

English mortmain acts are not a part of our common law.⁷⁷ In New York we have seen, by the statute of wills, no corporation may take by devise unless expressly authorized by the legislature of New York. Elsewhere the right to take by devise is a matter of comity, and ordinarily there is no more objection to a taking of real estate by devise than in any other manner.⁷⁸ A devise in trust to a corporation incapable at the time of the devise of taking the trust, may be paid over

⁷² *Black v. Caldwell*, 83 Fed. 880; *Columbus Buggy Co. v. Graves*, 108 Ill. 459; *Elston v. Piggott*, 94 Ind. 14. See *Leasure v. Union Mut. Life Ins. Co.*, 91 Pa. 491.

⁷³ *Black v. Caldwell*, 83 Fed. 880; *Amer. Mut. Life Ins. Co. v. Owen*, 15 Gray (Mass.), 491; *Calrow v. Aultman*, 28 Neb. 672, 44 N. W. 873; *Meddis v. Kenney*, 176 Mo. 200, 75 S. W. 633.

⁷⁴ *Diefenbach v. Vaughan*, 116 Ala. 150, 23 So. 88 (*semble*); *Amer. Mut. Life Ins. Co. v. Owen*, 15 Gray (Mass.), 491.

⁷⁵ That it may not: *W. A. Wood M. Machine Co. v. Caldwell*, 54 Ind. 270, 23 A. R. 641; *Daly v. Nat. Life Ins. Co.*, 64 Ind. 1; *contra*, *DeCamp v. Warren Mtg. Co.*, 65 Kan. 860, 70 Pac. 581; *Keene Guaranty Savings Bank v. Lawrence*, (Wash.) 73 Pac. 680. See *Building & Loan Ass. v. Walker*, (Tenn. Ch.) 42 S. W. 191; *Gilmer v. U. S. Savings & Loan Co.*, 103 Tenn. 272, 52 S. W. 851.

⁷⁶ *Farmers' Loan & Trust Co. v. Chic. & N. P. R. R.*, 68 Fed. 412.

⁷⁷ *Lathrop v. Commercial Bank*, 8 Dana (Ky.), 114, 33 A. D. 481; *Amer. Bible Soc. v. Marshall*, 15 Oh. St. 537.

⁷⁸ *White v. Howard*, 38 Conn. 342; *Lathrop v. Commercial Bank*, 8 Dana (Ky.), 114, 33 A. D. 481; *Amer. Bible Soc. v. Marshall*, 15 Oh. St. 537;

on the passage by the legislature of an act enabling the corporation so to take.⁷⁹

§ 229. Taking by eminent domain.

The right to exercise the power of eminent domain is a franchise, and a foreign corporation cannot exercise it without express permission;⁸⁰ and when condemnation proceedings have actually been begun by a foreign corporation and an appraisal made, the proceedings are absolutely void.⁸¹ A petition to remove a cause to the Federal court on the ground that one party was a foreign corporation was refused, since it appeared that the whole controversy arose out of a claim by the corporation of the right to condemn land.⁸² A foreign corporation that cannot take land directly cannot, it is held, do it by indirection, by means of domestic corporation.⁸³

But a State may confer this power upon a foreign corporation;⁸⁴ or may grant to a foreign corporation the same privileges as to a domestic corporation.⁸⁵ To this there is no constitutional objection.⁸⁶ A municipal corporation whose charter

State v. Sherman, 22 Oh. St. 411; *Thompson v. Swoope*, 24 Pa. 474; *University v. Tucker*, 31 W. Va. 621, 8 S. E. 410.

⁷⁹ *Baker v. Clarke Institution*, 110 Mass. 88; *Fellows v. Miner*, 119 Mass. 541; and so of a devise to a corporation to be created, *Ould v. Washington Hospital*, 95 U. S. 303, 24 L. ed. 450.

⁸⁰ *St. Louis & S. F. R. R. v. Foltz*, 52 Fed. 627 (*semble*); *St. Louis & S. F. R. R. v. S. W. Tel. & Tel. Co.*, 121 Fed. 276; *Holbert v. St. Louis, K. C. & N. R. R.*, 45 Ia. 23; *Illinois S. T. Co. v. St. Louis, I. M. & S. Ry.*, 208 Ill. 419, 70 N. E. 357; *Trester v. Mo. Pac. Ry.*, 33 Neb. 171, 36 N. W. 502; *State v. Boston, C. & M. R. R.*, 25 Vt. 433 (*semble*); *Baltimore & O. R. R. v. Pittsburg, W. & K. R. R.*, 17 W. Va. 812, 867.

⁸¹ *Trester v. Mo. Pac. Ry.*, 33 Neb. 171, 36 N. W. 502.

⁸² *Baltimore & O. R. R. v. Pittsburg, W. & Ky. R. R.*, 17 W. Va. 812, 867.

⁸³ *Koenig v. Chicago, B. & Q. R. R.*, 27 Neb. 699, 43 N. W. 423.

⁸⁴ *Illinois S. T. Co. v. St. Louis, I. M. & S. Ry.*, 208 Ill. 419, 70 N. E. 357; *Abbott v. New York & N. E. R. R.*, 145 Mass. 450, 15 N. E. 91; *Gray v. St. Louis & S. F. R. R.*, 81 Mo. 126; *In re Marks*, 6 N. Y. Supp. 105; *State v. Sherman*, 22 Oh. St. 411.

⁸⁵ *New York & Erie Ry. v. Young*, 33 Pa. 175.

⁸⁶ *In re Townsend*, 39 N. Y. 171; *Morris Canal & B. Co. v. Townsend*, 24 Barb. (N. Y.) 658.

gives it the right of eminent domain, may in turn grant it to a foreign corporation.⁸⁷ The transfer of the franchises of a domestic corporation to a foreign corporation would not of itself carry this privilege, but the State may give its assent; and this assent may be gathered by implication.⁸⁸ Upon the consolidation of a domestic corporation with a foreign corporation, this franchise remains with the consolidated corporation.⁸⁹

§ 230. Taking personal property.

In the ordinary case a foreign corporation may freely acquire and hold personal property.⁹⁰ And it may therefore take such property by way of pledge to secure a loan.⁹¹ But, as we have seen, if it is against the declared public policy of the State for such property to be so taken, the foreign corporation may not take it. Thus it was held in Georgia that a foreign corporation could not take slaves for the purpose of freeing and colonizing them, the act being contrary to public policy.⁹²

Bequests of personal property to a foreign corporation are everywhere valid.⁹³ It is not contrary to the public policy of one State that gifts of personal property should be made to a corporation of another State, since the *situs* of the property is thus removed to the other State. Bequests to foreign corporations are therefore not forbidden by the New York Statute of Wills,⁹⁴ nor by mortmain acts.⁹⁵ As was said by the Mary-

⁸⁷ Dodge v. Council Bluffs, 57 Ia. 560, 10 N. W. 886.

⁸⁸ Abbott v. N. Y. & N. E. R. R., 145 Mass. 450, 15 N. E. 91.

⁸⁹ Toledo, A. A. & G. S. Ry. v. Dunlap, 47 Mich. 456.

⁹⁰ Thompson v. Waters, 25 Mich. 214, 225, 12 A. R. 243 (*semble*); Commercial Nat. Bank v. Corcoran, 6 Ont. 527.

⁹¹ Birkbeck Inv., Sec. & Sav. Co. v. Brabant, 8 Quebec Q. B. 311.

⁹² Amer. Colonization Society v. Gattrell, 23 Ga. 448.

⁹³ Sherwood v. Amer. Bible Society, 4 Abb. App. (N. Y.) 227; University v. Tucker, 31 W. Va. 621, 8 S. E. 410.

⁹⁴ Chamberlain v. Chamberlain, 43 N. Y. 424; Sherwood v. Amer. Bible Soc., 4 Abb. App. (N. Y.) 227.

⁹⁵ Vansant v. Roberts, 3 Md. 119; Brown v. Thompkins, 49 Md. 423; Thompson v. Swoope, 24 Pa. 475.

land court in *Vansant v. Roberts*:⁹⁶ "So far as personal property is concerned, the Maryland mortmain act has no extra-territorial effect. Personal property follows the *locus* of the owner; and we cannot see why it should be a matter of concern to Maryland that the personal property should pass away to foreign corporations any more than to individuals living abroad."

§ 231. Protecting a name.

That a corporation may have a right to the exclusive use of its name is clear. Whether there is any legal title in the name itself is more doubtful under our law; though it is not infrequently provided by statute⁹⁷ that no new corporation shall be formed with a name similar to that of an existing corporation. The common-law right seems to be no more than the right to protect the corporate name as a trade-mark; existing only when the name is a distinctive one, and the use of it by the defendant would cause deception and loss to the plaintiff.⁹⁸

The bearer of the name may desire either to prevent the formation of a new corporation with a similar name, or to restrain its operation after it is formed. In the first case, it seems clear that (unless permitted by the express language of some statute) no foreign corporation, admitted by the comity of the State to do business there, can restrain the contemplated action of the State in creating a domestic corporation with a similar name.⁹⁹ In such a case *Gresham, J.*, said: "It is only by comity that it is doing business in Illinois at all. The State can say to it any day, 'Go!' and it must go. That being so, I do not see that the complainant has a legal right to say a corporation shall not be created in Illinois bearing its (the complainant's) name. If the State of Illinois may create a

⁹⁶ 3 Md. 119.

⁹⁷ See Chapter II.

⁹⁸ *Goodyear's I. R. G. Mfg. Co. v. Goodyear Rubber Co.*, 128 U. S. 598, 32 L. ed. 535; *International Trust Co. v. International L. & T. Co.*, 153 Mass. 271, 26 N. E. 693, 10 L. R. A. 758.

⁹⁹ *Lehigh Valley Coal Co. v. Hamblen*, 23 Fed. 225.

corporation bearing the same name as the complainant,—and it certainly can,—this court has no right by injunction to prevent anything from being done under the State law which is necessary in the creation of such a corporation. . . . I do not say what may be done if the defendants succeed in creating their corporation bearing the complainant's name, and a suit shall be brought by the complainant to prevent individuals claiming to be officers or managers of such corporation from interfering with the complainant's business."

If both corporations are formed, and the plaintiff desires to restrain the action of the defendant, we have a different case, as was intimated in the last paragraph; but even in this case also it seems to be assumed that a foreign corporation, acting merely by license of the State, will not be allowed to restrain by injunction the use by a domestic corporation of its own name. "The complainant is in the attitude of a foreign corporation coming into this state, and seeking to contest the right to the use of a corporate name which this state, in furtherance of its own public policy and in the exercise of its own sovereignty, has seen fit to bestow upon one of its own corporations. For such a purpose a foreign corporation, ordinarily, at least, can have no standing in our courts. Such corporations do not come into this state as a matter of legal right, but only by comity; and they cannot be permitted to come for the purpose of asserting rights in controvention of our laws or public policy. It is competent for this state, whenever it sees fit to do so, to debar any or all foreign corporations from doing business here; and whatever it may do by way of chartering corporations of its own cannot be called in question by corporations which are here only by a species of legal sufferance. We would not be understood, however, as holding that cases may not arise where the name of a foreign corporation has so far become its trade-mark or trade name as to entitle it to protection in our courts against infringement caused by the chartering of a domestic corporation by the same name. We only wish to hold that the present case is not of that char-

acter.”¹⁰⁰ What may be meant by the suggestion at the end of this quotation is not clear. All that can safely be said at present was said by Judge Pardee in *Continental Insurance Company v. Continental Fire Association*:¹⁰¹ “We have found no case in which a foreign corporation has been heard to complain of the corporate name given by the sovereign to a domestic corporation.” In all cases of this sort which have been found, the plaintiff was refused relief on another ground.¹⁰²

§ 232. Exercising a franchise.

Comity is never extended so far as to allow a foreign corporation to exercise what is strictly a corporate franchise. The Supreme Court of Maine said that a bridge corporation of Maine could not, merely by comity, collect tolls at the Canadian end of its bridge.¹⁰³ But where the right to exact tolls for crossing a bridge was appurtenant to land, and a foreign corporation bought the land, the Supreme Court of Alabama held that it might collect the tolls.¹⁰⁴ This decision is certainly questionable.

The mere holding of land is not a franchise.¹⁰⁵ In *Thompson v. Waters*,¹⁰⁶ the court said: “The mere right of a corporation to purchase and sell property, not being in its nature strictly a franchise, but a right existing equally in individuals without special grant, is very generally recognized in States other than those of its creation.”

¹⁰⁰ *Bailey, J., in Hazleton Boiler Co. v. Hazleton Tripod Boiler Co.*, 142 Ill. 494, 30 N. E. 339.

¹⁰¹ 101 Fed. 255, 256.

¹⁰² *Continental Ins. Co. v. Continental Fire Assoc.*, 101 Fed. 255 (name a mere geographical one); *Hazleton Boiler Co. v. Hazleton T. B. Co.*, 142 Ill. 494, 30 N. E. 339 (prior use of name by plaintiff illegal); *American Tartar Co. v. American Tartar Co.*, 68 N. Y. Supp. 236, 57 App. Div. 411 (plaintiff not entitled to do business in the State).

¹⁰³ *Middle Bridge Co. v. Marks*, 26 Me. 326.

¹⁰⁴ *Columbus v. Rodgers*, 10 Ala. 37.

¹⁰⁵ *State v. Boston, C. & M. R. R.*, 25 Vt. 433.

¹⁰⁶ 25 Mich. 214, 12 A. R. 243.

§ 233. Taking in trust.

A corporation may hold as trustee;¹⁰⁷ but only when it is allowed to hold for its own purposes¹⁰⁸ or has complied with the law.¹⁰⁹ So a foreign corporation, empowered to do so by its charter, may take property as executor.¹¹⁰ *A fortiori* if it obtained title outside the State it may enforce its title within the State by appropriate proceedings.¹¹¹

But though a foreign corporation will not be allowed to take active charge of a trust until it has complied with the State law, the trust deed to it is good.¹¹²

And where land was devised to a foreign corporation as trustee, such corporation not being allowed by the law of the *situs* to hold the land, a similar domestic corporation was substituted as trustee.¹¹³

§ 234. Conveying property.

As has been seen a foreign corporation may not only take property, it may also convey it. Like an individual's, its conveyance must be made according to the law of the place where the property is situated;¹¹⁴ and it may in some cases be impossible for a foreign corporation to make a valid conveyance. This is not because it is a foreign corporation, but because it is not able to comply with the general requirements of the law. Thus where it is provided by statute that a chattel mortgage

¹⁰⁷ *Farmers' Loan & Tr. Co. v. Chicago & A. Ry.*, 27 Fed. 146.

¹⁰⁸ *United States Trust Co. v. Lee*, 73 Ill. 142, 24 A. R. 236.

¹⁰⁹ *Farmers' Loan & Trust Co. v. Chic. & N. P. R. R.*, 68 Fed. 412; *Farmers' Loan & Trust Co. v. Lake St. El. R. R.*, 173 Ill. 439, 51 N. E. 55. See, however, *Eakridge v. Louisville Trust Co.*, 29 Tex. Civ. App. 571, 69 S. W. 987, holding that a foreign corporation as trustee may maintain suit in ejectment.

¹¹⁰ *Deringer v. Deringer*, 5 Houst. (Del.) 416, 1 A. S. R. 150.

¹¹¹ *Toronto G. T. Co. v. Chicago, B. & Q. R. R.*, 123 N. Y. 37, 25 N. E. 198.

¹¹² *Farmers' Loan & Trust Co. v. Chicago & N. P. R. R.*, 68 Fed. 412; *Morse v. Holland Trust Co.*, 184 Ill. 255, 56 N. E. 369.

¹¹³ *In re Macdonald's Will*, (1902) Queensland W. N. 22.

¹¹⁴ *Fowler v. Bell*, 90 Tex. 150, 37 S. W. 1058, 59 A. S. R. 787, 39 L. R. A. 254.

shall not be valid unless it is acknowledged or recorded where the mortgagor resides, a foreign corporation cannot make a chattel mortgage, since it has no place of residence.¹¹⁵

These are general provisions, applying to every conveyance; but a statute requiring certain exceptional formalities in the case of conveyances by corporations is to be interpreted as applying only to domestic corporations. For such a statute is adopted, either as a measure for the governance of its corporations, or as a protection to its stockholders; in neither case is it concerned with the governance of the corporation of another State, or with the interests of its members. Though it is of course within the power of the State to legislate in this way for foreign corporations which attempt to convey property within its limits, it is so unlikely a thing for the State to do that clear evidence of such an intention must appear in a statute if such an interpretation is to be adopted. Thus in *Saltmarsh v. Spaulding*¹¹⁶ the validity of a mortgage of land by a foreign corporation, authorized by a directors' vote, was in question. A statute of Massachusetts required a stockholders' vote to authorize a mortgage of land by a corporation; but it was held that this provision applied only to domestic corporations, and the mortgage was sustained. So where a New York statute forbade assignments for the benefit of creditors by corporations, this was held not to apply to a foreign corporation which by the law of its own State had a right to make such an assignment.¹¹⁷

On the other hand, such provisions of law in the State of charter will not necessarily be carried into effect in a foreign State. Thus where a New York corporation, being insolvent, had mortgaged land in New Jersey to a stockholder, such a mortgage being valid in New Jersey but forbidden in New

¹¹⁵ *Watson v. Thompson Lumber Co.*, 49 Ark. 83; *Cook v. Hager*, 3 Colo. 386.

¹¹⁶ 147 Mass. 224, 17 N. E. 316.

¹¹⁷ *Vanderpoel v. Gorman*, 140 N. Y. 563, 35 N. E. 932, 37 A. S. R. 601, 24 L. R. A. 548. *Contra (semble)*, *Lamb v. Russell*, 81 Miss. 382, 32 So. 916.

York, the mortgage was upheld.¹¹⁸ And a general assignment for benefit of creditors made by a foreign corporation, and valid where made, will be sustained, though forbidden to a corporation by the State of charter.¹¹⁹ Where the State in which property is situated forbids certain dealing with property, the corporation of course cannot do the act, and if it attempts to do so the transaction is void. Thus where a foreign corporation is empowered to hold real estate, but forbidden to mortgage it, an attempted mortgage is void.¹²⁰ And where a foreign corporation was forbidden to accept an appointment as executor without making a certain deposit, such a corporation before making the deposit could not convey land as executor.¹²¹ Nor will a foreign corporation be allowed to act as trustee before complying with the law.¹²² And so if a foreign corporation may not mortgage, a chattel mortgage of property in a foreign State though executed in the State of charter where such mortgage is valid, is without effect to convey.¹²³

A corporation having power to sell may lease property although it could not retain the property for use.¹²⁴

¹¹⁸ *Boehme v. Rall*, 51 N. J. Eq. 541, 26 Atl. 832; to same effect *Nathan v. Lee*, 152 Ind. 232, 52 N. E. 987, 43 L. R. A. 820.

¹¹⁹ *Warren v. First Nat. Bank*, 149 Ill. 9, 38 N. E. 122, 25 L. R. A. 746; *Pairpoint Mfg. Co. v. Phila. Optical & Watch Co.*, 161 Pa. 17, 28 Atl. 1003; *East Side Bank v. Columbus Tannery Co.*, 170 Pa. 1, 32 Atl. 539; *Borton v. Brines-Chase Co.*, 175 Pa. 209, 34 Atl. 597. *Contra* *Pierce v. Crompton*, 13 R. I. 312.

¹²⁰ *Talmdage v. North Amer. Coal Co.*, 3 Head (Tenn.), 337.

¹²¹ *Pennsylvania Co. v. Bauerle*, 143 Ill. 459, 33 N. E. 166.

¹²² *Farmers' Loan & Trust Co. v. Chicago & N. P. R. R.*, 68 Fed. 412; *Morse v. Holland Trust Co.*, 184 Ill. 255, 56 N. E. 369.

¹²³ *Fowler v. Bell*, 90 Tex. 150, 37 S. W. 1058.

¹²⁴ *State v. N. O. Warehouse Co.*, 109 La. 64, 33 So. 81.

TITLE III.
OF SUITS BY AND AGAINST CORPORATIONS.

CHAPTER X.

SUITS BY CORPORATIONS.

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| <p>§ 241. Foreign corporation has power to sue.</p> <p>242. Foreign corporation has right to sue.</p> <p>243. Disabilities of alienage.</p> <p>244. Disabilities of incorporation: Statutory requirements.</p> <p>245. Statute not expressly forbidding suit.</p> <p>246. Statute expressly forbidding suit.</p> <p>247. Suit by assignee.</p> <p>248. Statute subsequent to contract.</p> <p>249. Contract made outside State.</p> | <p>§ 250. Contract connected with interstate commerce.</p> <p>251. Right of action for tort.</p> <p>252. Protection of property.</p> <p>253. Right to cross-action and appeal.</p> <p>254. Right to sue and compliance with statute not alleged by plaintiff.</p> <p>255. Failure of plaintiff to comply with statute set up by defendant.</p> <p>256. Proof of compliance.</p> <p>257. Proof of incorporation.</p> |
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§ 241. Foreign corporation has power to sue.

It was once thought that according to the common law a foreign corporation could not sue; for a foreign incorporation, being a foreign fact, could not be found by a jury taken from the county. But as juries came to be instructed by witnesses they could deal with foreign facts; and it was finally held that a foreign corporation might sue in a common-law court, producing its charter to prove its incorporation.¹ It is now, therefore, everywhere agreed that a foreign corporation may sue if permitted access to the courts.

¹ See Introduction.

§ 242. Foreign corporation has right to sue.

A State may open its courts to whom it pleases; no country is bound to be at the expense and trouble of furnishing justice to foreigners. In France, and in most European states, adopting the French legislation, access to the ordinary civil courts is denied to aliens. But the common law has almost from the beginning adopted a more liberal principle, and has allowed foreigners free access to its courts.² And in accordance with this general principle a foreign corporation (subject to certain exceptions about to be stated) is permitted to sue in a common-law court.³ Even if the corporation was formed by residents of the State who incorporated in another State in order to avoid the burdens of their own law, it may nevertheless sue in their State.⁴ And it may be said generally that in the absence of a statutory provision forbidding it a foreign corporation, though it has not filed its charter or appointed a resident agent, may sue.⁵

§ 243. Disabilities of alienage.

A few States, departing from the general doctrine of the common law, forbid aliens (including foreign corporations) access to their courts in certain cases. Thus in New York one alien cannot sue another in tort for a cause of action which accrued abroad.⁶ And this disability is extended by statute, both in New York ⁷ and in several other States,⁸ so as to forbid

² *Roberts v. Knights*, 7 All. (Mass.) 449.

³ *Savage Mfg. Co. v. Armstrong*, 17 Me. 34; *Portsmouth Livery Co. v. Watson*, 10 Mass. 91; *Direct U. S. C. Co. v. Dominion T. Co.*, 84 N. Y. 153.

⁴ *Cumberland T. & T. Co. v. Louisville H. T. Co.*, 24 Ky. L. Rep. 1676, 72 S. W. 4.

⁵ *John Spry Lumber Co. v. Chappell*, 184 Ill. 539, 56 N. E. 794; *Colonial & U. S. M. Co. v. Catlin*, 8 Kan. App. 860, 57 Pac. 140; *Alliance T. Co. v. Wilson*, 9 Kan. App. 891, 59 Pac. 177; *Diamond Match Co. v. Roeber*, 106 N. Y. 473, 13 N. E. 419; *National C. R. Co. v. Wilson*, 9 N. Dak. 112, 81 N. W. 285; *Bank of Marietta v. Pindall*, 2 Rand. (Va.) 465.

⁶ *Gardner v. Thomas*, 14 Johns. (N. Y.) 134, 7 A. D. 445.

⁷ N. Y. Co. Civ. Pro. § 1780.

⁸ The statutes are collected in Chapter VII.

a foreign corporation to sue another foreign corporation except on a cause of action arising within the State.⁹ This provision is constitutional, even where the result of it is to deny an action on a judgment of another State obtained by the corporation which now seeks to enforce it.¹⁰ The New York statute does not apply to an action against a non-resident individual.¹¹

§ 244. Disabilities of incorporation: Statutory requirements.

In addition to the ordinary disabilities arising from alienage, a foreign corporation may be subject to statutory disability because of failure to comply with some condition imposed upon corporations before bringing suit. It has been seen¹² that the conditions which must be complied with by a foreign corporation before doing business in a State do not apply to the mere bringing of suit, since that is not doing business. But in many States it is specially provided that a foreign corporation shall not sue until it has complied with the conditions imposed by the statute; and in other States, where doing business is forbidden but no provision against suit is contained in the statute, it is held that suit cannot be brought on a contract made within the State before compliance, either because the contract is in itself void, or because it is against public policy to allow suit upon it. In other States it is held in such a case that though the contract was forbidden it was not void, and suit may be brought upon it. Several cases may therefore arise under the statutes, and must be separately considered.

§ 245. Statute not expressly forbidding Suit.

It has already been seen¹³ that in many jurisdictions a contract made in violation of the statute is void. Where that is

⁹ See *infra*, § 285.

¹⁰ *Anglo-American Provision Co. v. Davis Provision Co.*, 50 App. Div. 273, 63 N. Y. S. 987.

¹¹ *Colorado State Bank v. Gallagher*, 76 Hun (N. Y.), 310, 27 N. Y. S. 688.

¹² *Ante*, § 209.

¹³ *Ante*, § 214.

the case, it is obvious that no suit can be brought upon the contract even after subsequent compliance with the statutory requirements.¹⁴ But in jurisdictions which do not hold such contracts void, suit may be maintained upon them in the courts of the State whose statutes were violated, in the absence of an express statutory prohibition of suit.¹⁵ And since the prohibition of suit by a State statute does not affect the Federal courts, a suit may be brought in such a case in the Federal court though the State statute expressly prohibits suits.¹⁶ But even if the contract is not void, it seems to be held in Michigan to be against public policy, and therefore not enforceable in the courts.¹⁷

§ 246. Statute expressly forbidding suit.

In several jurisdictions suit is forbidden on a contract made within the State before compliance with the Statute¹⁸ or even on a contract made anywhere, until the corporation complies.¹⁹ In the former case, it is important to determine whether a compliance with the statute after making the contract will be sufficient. If the contract is regarded as void, of course no subsequent compliance can make it valid or support suit upon it; but if it was valid but unenforceable, a subsequent compliance with the statute would remove the bar to a suit. By

¹⁴ *Reliance M. I. Co. v. Sawyer*, 160 Mass. 413, 36 N. E. 59; *Baldwin v. Conn. M. L. I. Co.*, 182 Mass. 389, 65 N. E. 837; *Delaware, R. Q. & C. Co. v. Bethlehem & N. P. Ry.*, 204 Pa. 22, 53 Atl. 533. In Arkansas, by express statute, such contracts are void when made with citizens, not when made with persons not citizens. *St. Louis, A. & T. Ry. v. Fire Ass.*, 60 Ark. 325, 30 S. W. 350, 24 L. R. A. 83.

¹⁵ *Rockford Ins. Co. v. Rogers*, 9 Colo. App. 121, 47 Pac. 848; *C. B. Rogers & Co. Corp. v. Simmons*, 155 Mass. 259, 29 N. E. 580; *Garratt-Ford Co. v. Vermont Mfg. Co.*, 20 R. I. 187, 37 Atl. 948, 78 A. S. R. 852, 38 L. R. A. 545.

¹⁶ *Blodgett v. Lanyon Zinc Co.*, 120 Fed. 893.

¹⁷ *Seamans v. Temple & Co.*, 105 Mich. 400, 63 N. W. 408, 55 A. S. R. 457, 28 L. R. A. 430.

¹⁸ See Chap. VII.

¹⁹ *J. Walter Thompson Co. v. Whitehead*, 185 Ill. 454, 56 N. E. 1106; *Bradley-Metcalf & Co. v. Armstrong*, 9 S. D. 267, 68 N. W. 733.

the weight of authority, suit may be maintained after compliance with the statute upon a contract made before compliance.²⁰

It has even been held that compliance with the statute pending suit will be enough;²¹ and though in the most important case so holding the decision was rested in part upon the use in the statute of the word "maintain" (rather than "bring") suit, the decision would seem sound in any jurisdiction where the contract itself is valid.

§ 247. Suit by assignee.

It has been urged that though the corporation itself cannot sue before compliance, yet in a State where the contract itself is not void and where an assignee of a chose in action may sue in his own name, an assignee of the contract should be allowed to sue; and in one case it was so held, the court saying that the disability of an assignor does not affect the remedy of the assignee.²² But the prevailing and it would seem the sounder view is that the statute operates not merely to deny a remedy in the ordinary sense, but to take away jurisdiction from the court, and that the court being deprived of jurisdiction by the statute cannot take it merely because the claim has been assigned.²³

²⁰ *Crefield Mills v. Goddard*, 69 Fed. 141; *Goddard v. Crefield Mills*, 75 Fed. 818; *Simplex Dairy Co. v. Cole*, 86 Fed. 739; *Security S. & L. Ass. v. Elbert*, 153 Ind. 198, 54 N. E. 753; *Carson Rand Co. v. Stern*, 129 Mo. 381, 31 S. W. 772, 32 L. R. A. 352; *Chicago M. & L. Co. v. Sims*, (Mo. App.) 74 S. W. 128; *Neuchatel Asphalte Co. v. New York*, 155 N. Y. 373, 49 N. E. 1043; *Reedy Elevator Co. v. American Grocery Co.*, 23 Misc. 520, 51 N. Y. Supp. 874; *Huttig Bros. M. Co. v. Denny Hotel Co.*, 6 Wash. 122, 32 Pac. 1073; *Toledo Tie Co. v. Thomas*, 33 W. Va. 566, 11 S. E. 37, 25 A. S. R. 925. *Contra*, *G. Heilman Brewing Co. v. Peimeisl*, 85 Minn. 121, 88 N. W. 441; *Western P. B. Co. v. Johnson*, (Tex. Civ. App.) 38 S. W. 364 (by express provision of the statute).

²¹ *Buffalo Z. & C. Co. v. Crump*, 70 Ark. 525, 69 S. W. 572, 91 A. S. R. 87; *Carson-Rand Co. v. Stern*, 129 Mo. 381, 31 S. W. 772, 32 L. R. A. 352.

²² *Lindheim v. Sitt*, 33 Misc. 62, 68 N. Y. S. 145.

²³ *Mueller v. William F. Wall Rope Co.*, 53 N. Y. S. 255; *Herzberg v.*

§ 248. Statute subsequent to contract.

If a valid contract has been made by a foreign corporation, the right of the corporation to sue upon it is not affected by the subsequent passage of a statute establishing some condition which the corporation had not performed. This is often expressly provided in the statute itself; but whether so expressly provided or not, it is always held that such a statute is prospective only, and does not affect the right of the corporation to sue upon contracts made before its passage.²⁴

§ 249. Contract made outside State.

There is nothing in the ordinary statutes to prevent a foreign corporation from suing on a contract made outside the State, since the statute forbids only the doing of business within the State before compliance. A foreign corporation, therefore, without complying with the statute, may sue on a contract made outside the State.²⁵ It has, however, been held in Michigan that a foreign corporation which in evasion of the Michigan law and without complying with its provisions made in another State a contract to insure Michigan property would be forbidden, on the ground of public policy, to maintain an action on the contract in Michigan.²⁶

In accordance with the general view, a foreign corporation

Boiesen, 55 N. Y. S. 256; *Kinney v. Reid I. C. Co.*, 57 App. Div. 206, 68 N. Y. S. 325; *Texas & P. Ry. v. Davis*, (Tex. Civ. App.) 54 S. W. 381.

²⁴ *Standard S. M. Co. v. Frame*, 2 Pen. (Del.) 430, 48 Atl. 188; *Richardson v. United States M. & T. Co.*, 194 Ill. 259, 62 N. E. 606 (but see *J. Walter Thompson Co. v. Whitehead*, 185 Ill. 454, 56 N. E. 1106); *Security S. & L. Ass. v. Elbert*, 153 Ind. 198, 54 N. E. 753; *United States S. & L. Co. v. First M. P. Church*, 153 Ind. 701, 55 N. E. 743; *Keystone Mfg. Co. v. Howe*, 89 Minn. 256, 94 N. W. 723; *M. B. Faxon Co. v. Lovett Co.*, 60 N. J. L. 128, 36 Atl. 692; *Atlantic Const. Co. v. Kreusler*, 40 App. Div. 268, 57 N. Y. S. 983; *Middlebrook v. David Bradley Mfg. Co.*, (Tex. Civ. App.) 27 S. W. 169.

²⁵ *White River L. Co. v. Southwestern Imp. Ass.*, 55 Ark. 625, 18 S. W. 1055; *Ware Cattle Co. v. Anderson*, 107 Ia. 231, 77 N. W. 1026; *MacMillan Co. v. Stewart*, (N. J. L.) 54 Atl. 240; *Slaytor-Jennings Co. v. Specialty P. B. Co.*, (N. J. L.) 54 Atl. 247; *Batchelder & Lincoln Co. v. Knopf*, 54 App. Div. 329, 66 N. Y. S. 513.

²⁶ *Seamans v. Temple & Co.*, 105 Mich. 400, 63 N. W. 408.

may sue on a contract made outside the State before it began to do business in the State, though at the time of trial it may be doing business in the State without compliance with the statute.²⁷ Since the foreign corporation itself might sue, its assignee may sue (in a jurisdiction which allows suit by an assignee of a chose in action) on a contract made in another State.²⁸

Even if the foreign corporation had not complied with the statute in the State where it made the contract, and, therefore, could not sue there, it may sue in another State without compliance. The disability to sue will be given no extra-territorial effect.²⁹

§ 250. Contract connected with interstate commerce.

Since a State cannot regulate interstate commerce or put any condition upon its exercise, the statutes regulating doing business by foreign corporations must be interpreted as not applying to interstate commerce. A foreign corporation may therefore bring suit upon a contract which is an act of interstate commerce although it has not complied with the statutory requirements.³⁰

§ 251. Right of action for tort.

The rule is general but not universal that an individual may sue for a foreign committed tort,³¹ and in the States which allow suit by the individual, it would seem to follow that there

²⁷ *Stern v. Childs*, 26 Misc. 419, 56 N. Y. S. 192; *Whitley v. General Electric Co.*, (Tex. Civ. App.) 45 S. W. 959.

²⁸ *O'Reilly S. & F. Co. v. Greene*, 17 Misc. 302, 40 N. Y. S. 360.

²⁹ *Allegheny Co. v. Allen*, (N. J. L.) 55 Atl. 724.

³⁰ *Zion C. M. Ass. v. Mayo*, 22 Mont. 100, 55 Pac. 915; *Texas & P. Ry. v. Davis*, 93 Tex. 378, 55 S. W. 562; *Gale Mfg. Co. v. Finkelstein*, 22 Tex. Civ. App. 241, 54 S. W. 619; *Pasteur Vaccine Co. v. Burky*, (Tex. Civ. App.) 54 S. W. 804; *Tex. and Pac. Ry. v. Davis*, (Tex. Civ. App.) 54 S. W. 381; *Lane & Bodley Co. v. City E. L. & W. W. Co.*, (Tex. Civ. App.) 72 S. W. 425.

³¹ *Raphael v. Verelst*, 2 Wm. Blackstone, 1055. In New York, however, a non-resident may not be sued for a tort committed abroad. *Gardner v. Thomas*, 14 Johns. 134, 7 A. D. 445.

may be suit by a foreign corporation for tort against it abroad. At any rate, even if a foreign corporation is not allowed to sue in contract at all, or in tort for tort committed against it abroad, it will be allowed to sue for tort committed against it within the jurisdiction.³² A *quære* in Illinois whether a foreign corporation can sue for libel³³ appears to be ill-founded.

§ 252. Protection of property.

The failure of a corporation to comply with the statutory requirements does not put its property outside the protection of the law, and though it may not sue on a contract it may take legal steps to protect or recover its property. Thus a foreign corporation without compliance with the statute may bring replevin for its property,³⁴ or trespass to try title;³⁵ it may maintain a bill in equity to set aside a deed of its land as fraudulent,³⁶ or sue for trespass on its property,³⁷ for trover,³⁸ or in case for negligent destruction of it.³⁹ So it may file a claim for a mechanic's lien,⁴⁰ though it cannot bring suit to enforce the lien before compliance, since that requires the establishment of its contract.

So a foreign corporation without complying with the statute may sue to recover from its agent money of the corporation which he has collected in the course of the business;⁴¹ and

³² *Delaware & A. T. & T. Co. v. Pensauken*, 116 Fed. 910; *St. Louis, A. & T. Ry. v. Fire Ass.*, 60 Ark. 325, 30 S. W. 350; *Portsmouth Livery Co. v. Watson*, 10 Mass. 91; *Joseph Schlitz Brew. Co. v. Ester*, 33 N. Y. S. 143, 86 Hun, 22.

³³ *Hahnemannian L. I. Co. v. Beebe*, 48 Ill. 87, 95 A. D. 519.

³⁴ *Smith v. Little*, 67 Ind. 549; *American Typefounders Co. v. Conner*, 6 Misc. 391, 26 N. Y. S. 742, 56 N. Y. St. R. 398.

³⁵ *Eskridge v. Louisville T. Co.*, (Tex. Civ. App.) 69 S. W. 987.

³⁶ *Joseph Schlitz Brewing Co. v. Ester*, 86 Hun, 22, 33 N. Y. S. 143.

³⁷ *Delaware & A. T. & T. Co. v. Pensauken*, 116 Fed. 910.

³⁸ *Portsmouth Livery Co. v. Watson*, 10 Mass. 91.

³⁹ *St. Louis, A. & T. Ry. v. Fire Ass.*, 60 Ark. 325, 30 S. W. 350.

⁴⁰ *Neuchatel Asphalte Co. v. New York*, 155 N. Y. 373, 49 N. E. 1043; *In re Simonds Furnace Co.*, 30 Misc. 209, 61 N. Y. S. 974; *Huttig Bros. Mfg. Co. v. Denny Hotel Co.*, 6 Wash. 122, 32 Pac. 1073.

⁴¹ *In re Hovey's Estate*, 198 Pa. 385, 48 Atl. 311.

if an agent of such a corporation is prosecuted for embezzling its property, it is no defence that the corporation obtained the property by doing business in violation of the statute.⁴² So in an action on an agent's bond, the obligor cannot set up in defence the illegality of the business.⁴³

§ 253. Right to cross-action and appeal.

If a corporation has been sued within the jurisdiction and has submitted to suit it will have the right of cross-action, whether it could have sued originally or not.⁴⁴ And it further must have the right to appeal from the decision against it in such an action.⁴⁵

§ 254. Right to sue and compliance with statutes not alleged by plaintiff.

Disability to sue, though it may exist, is never presumed; and mere ability to sue need not be set out by the plaintiff in his pleadings. Unless the disability of the plaintiff to maintain his suit is apparent on the face of his pleadings, it is not the subject of demurrer, but of a plea. A foreign corporation therefore need not in its declaration set out terms of its charter which confer on it the capacity to sue.⁴⁶

Upon this principle it is generally held that a foreign corporation need not set out in his first pleading such compliance with the statute as is necessary to give it the right to sue.⁴⁷

⁴² *People v. Hawkins*, 106 Mich. 479, 64 N. W. 736; *State v. O'Brien*, 94 Tenn. 79, 28 S. W. 311, 26 L. R. A. 252.

⁴³ *Rockford Ins. Co. v. Rogers*, 9 Colo. App. 121, 47 Pac. 848.

⁴⁴ *J. R. Alsing Co. v. New England Quartz & Spar Co.*, 73 N. Y. S. 347, 66 App. Div. 473; *Swift & Co. v. Platte*, (Kan.) 72 Pac. 271.

⁴⁵ *Swift & Co. v. Platte*, (Kan.) 72 Pac. 271.

⁴⁶ *Smith v. Weed S. M. Co.*, 26 Oh. St. 562; *Taylor v. Bank of Alexandria*, 5 Leigh (Va.), 471.

⁴⁷ *Nelms v. Edinburgh A. L. M. Co.*, 92 Ala. 157, 9 So. 141 (explaining and modifying on his point *Farrior v. N. E. M. Security Co.*, 88 Ala. 275, 7 So. 200; *Christian v. Mortgage Co.*, 89 Ala. 198, 7 So. 427; and see *Ginn v. New England M. S. Co.*, 92 Ala. 135, 8 So. 388); *St. Louis, A. & T. Ry. v. Fire Ass. of Phila.*, 55 Ark. 163, 18 S. W. 43; *American B. H. & O.*

In the earlier New York cases it was held that on the affidavit on which a motion for attachment or arrest was based compliance with the statute must be shown.⁴⁸ "Ordinarily jurisdiction in a court of general jurisdiction need not be alleged; but where the provisions of the law are that the court shall have jurisdiction of a certain class of cases only where certain facts exist, it is necessary to allege, in order to show that a cause of action exists, that the facts essential to such jurisdiction are present. This rule that no presumptions are to be relied upon to sustain an attachment is fortified by the principle that in sustaining attachments strict construction of the statutes and the affidavits is required in favor of the person against whose property the attachment is obtained."⁴⁹

But this view was finally overthrown in the Court of Appeals, in an opinion in which Judge O'Brien expressed with great clearness and force the argument for the prevailing doctrine.⁵⁰

"Before these statutes were passed, the plaintiff could maintain this action under general provisions of law containing no restrictions whatever of the character referred to. The statutes in themselves give no right of action, and are not essential elements of the cause of action stated in the complaint. They are mere revenue regulations, compliance with which is made necessary in order to acquire the right to do business here and

S. S. M. Co. v. Moore, 2 Dak. 281, 8 N. W. 131; *Langworthy v. Garding*, 74 Minn. 325, 77 N. W. 207; *Zion Coöp. Mercan. Ass. v. Mayo*, 22 Mont. 100, 55 Pac. 915 (*semble*); *American H. S. S. Co. v. O'Rourke*, 23 Mont. 530, 59 Pac. 910; *Nicholl v. Clark*, 34 N. Y. S. 159, 13 Misc. 128; *O'Reilly, Skelly & Fogarty Co. v. Greene*, 41 N. Y. S. 1056, 18 Misc. 423; *Lukens Iron & Steel Co. v. Payne*, 43 N. Y. S. 376, 13 App. Div. 11; *Charles Roome Parmele Co. v. Haas*, 171 N. Y. 579, 64 N. E. 440; *Keokuk F. I. Co. v. Kingaland & D. M. Co.*, 5 Okla. 32, 47 Pac. 484; *Acme Mercan. Agency v. Rochford*, 10 S. D. 203, 72 N. W. 466, 65 A. S. R. 714; *Nickells v. People's Bldg., Loan & Sav. Ass.*, 93 Va. 380, 25 S. W. 8.

⁴⁸ *Sawyer Lumber Co. v. Bussell*, 84 Hun, 114, 31 N. Y. S. 1107; *Reedy Elevator Co. v. American Grocery Co.*, 24 Misc. 678, 53 N. Y. S. 989.

⁴⁹ *Gildersleeve, J.*, in *Reedy Elevator Co. v. American Grocery Co.*, *supra*.

⁵⁰ *Charles Roome Parmele Co. v. Haas*, 171 N. Y. 579, 64 N. E. 440.

to enforce causes of action in our courts. They may possibly be matters of defence, but not essential to be stated as part of the cause of action or right to sue. When a foreign corporation brings a suit in the courts of this state and states a good cause of action in the complaint, it will be assumed that it is rightfully in the state and properly in court until the contrary is made to appear. The question is one merely of pleading or procedure, and it does not go to the substance of the plaintiff's claim.

"Compliance with this statute was no part of the plaintiff's case, which was to be affirmatively stated. It has been generally held that such conditions are the same, and fulfill the same office, as a proviso in a statute the enacting clause of which gives the right of action and the subsequent provisions modify or limit that right. The plaintiff in such a case may rely upon the enacting clause, and leave it to the defendant to plead the proviso or exception. . . . The objection, at most, is one as to the character or capacity of the plaintiff to sue. That objection, if the defect appears upon the face of the complaint, must be taken by demurrer. Code, § 488. If it does not appear upon the face of the complaint, it may be taken by answer (Code, § 498); and if not taken either by demurrer or answer is deemed to have been waived. Code, § 499."

In a few States, however, it is held that compliance with the statute must be stated in the plaintiff's first pleading, since otherwise he cannot bring himself within the jurisdiction of the court.⁵¹ But under such statute, failure to allege may be supplied by amendment before final decree;⁵² and if the

⁵¹ *Cumberland Land Co. v. Canter Lumber Co.*, (Tenn. Ch.) 35 S. W. 886; *Taber v. Interstate Bldg. & Loan Ass.*, 91 Tex. 92, 40 S. W. 954; *Huffman v. West. Mtg. & Inv. Co.*, (Tex. Civ. App.) 36 S. W. 306; *Southern B. & L. Ass. v. Skinner*, 16 Tex. Civ. App. 475, 42 S. W. 320; *Peters v. Anheuser-Busch Brew. Ass.*, (Tex. Civ. App.) 55 S. W. 516; *Del. Ins. Co. v. Security Co.*, (Tex. Civ. App.) 54 S. W. 916; *Chapman v. Hallwood Cash Regis. Co.*, (Tex. Civ. App.) 73 S. W. 969 (*Miller v. Goodman*, [Tex. Civ. App.] 40 S. W. 743, *contra*, must be regarded as overruled).

⁵² *Woldert v. Nedderhut P. & P. Co.*, 18 Tex. Civ. App. 602, 46 S. W. 578.

plaintiff's pleading shows that the transaction is one of interstate commerce, the statute does not apply, and compliance need not be alleged.⁵³

§ 255. Failure of plaintiff to comply with statute set up by defendant.

Failure of the foreign corporation to comply with the terms of the statute is therefore a matter to be set up by the defendant; and the question must accordingly be raised in the defendant's plea,⁵⁴ and cannot be raised by a demurrer or equivalent motion,⁵⁵ unless (by the practice of some States) the defect appears on the face of the complaint.⁵⁶ Therefore if non-compliance is not set up in defense it is waived.⁵⁷

The defence in some States must be set up by a plea in abatement;⁵⁸ in most jurisdictions it may be set up in an answer or plea in bar, but it may be set up in a plea in abatement or special plea.⁵⁹ In order to be sufficient, the plea must set out

⁵³ *Brin v. Wachusett Shirt Co.*, (Tex. Civ. App.) 43 S. W. 295.

⁵⁴ *Gull River Lumber Co. v. Keefe*, 6 Dak. 160, 41 N. W. 743; *Standard S. M. Co. v. Frame*, 2 Pen. (Del.) 430, 48 Atl. 188; *Coppedge v. M. K. Goetz Brewing Co.*, 67 Kan. 851, 73 Pac. 908; *Thomas v. Remington Paper Co.*, 67 Kan. 599, 73 Pac. 908; *Savage Mfg. Co. v. Armstrong*, 17 Me. 34; *Barrett v. Mead*, 10 All. (Mass.) 337; *Langworthy v. Garding*, 74 Minn. 325, 77 N. W. 207; *St. George Vineyard Co. v. Fritz*, 48 App. Div. 233, 62 N. Y. S. 775; *Fuller & Co. v. Schrenk*, 58 App. Div. 222, 68 N. Y. S. 781; *International Soc. v. Dennis*, 76 App. Div. 327, 78 N. Y. S. 497; *Nicholl v. Clark*, 13 Misc. 128, 34 N. Y. S. 159; *O'Reilly, S. & F. Co. v. Greene*, 18 Misc. 423, 41 N. Y. S. 1056.

⁵⁵ *Henderson v. J. B. Brown Co.*, 125 Ala. 566, 28 So. 79; *Aultman & Taylor Co. v. Mead*, 22 Ky. L. Rep. 1189, 60 S. W. 294; *American H. S. S. Co. v. O'Rourke*, 23 Mont. 530, 59 Pac. 910; *O'Reilly S. & F. Co. v. Greene*, 18 Misc. 423, 41 N. Y. S. 1056; *G. Ober & Sons Co. v. Blalock*, 40 S. C. 31, 18 S. E. 264.

⁵⁶ *Henderson v. J. B. Brown Co.*, 125 Ala. 566, 28 So. 79 (*semble*); *Charles Roome Parmele Co. v. Haas*, 171 N. Y. 579, 64 N. E. 440.

⁵⁷ *Charles Roome Parmele Co. v. Haas*, 171 N. Y. 579, 64 N. E. 440; *American Typefounders Co. v. Conner*, 6 Misc. 39, 26 N. Y. S. 742.

⁵⁸ *Savage Mfg. Co. v. Armstrong*, 17 Me. 34.

⁵⁹ *Dundee M. T. & I. Co. v. Nixon*, 95 Ala. 318, 10 So. 311; *Standard S. M. Co. v. France*, 2 Pen. (Del.) 430, 48 Atl. 188; *Am. H. S. S. Co. v. O'Rourke*, 23 Mont. 530, 59 Pac. 910; *Northern Assur. Co. v. Borgelt*, (Neb.) 93 N. W.

the facts proving non-compliance, not a legal conclusion, as that the corporation has not filed a "duly-authenticated copy" of its charter.⁶⁰ Since compliance with the statutes was not necessary unless the business was done in the State, the plea must contain an allegation to that effect; since in the absence of such an allegation the contract will be presumed to have been made legally outside the State.⁶¹

§ 256. Proof of compliance.

When the fact of compliance has been raised by the pleadings it may be proved by certificate issued by the competent State officer showing the fact.⁶² It has been held that the burden of proving compliance, when it is denied in the answer, is upon the corporation;⁶³ though it is more in accordance with the general principles of procedure to require the defendant, since he must allege the non-compliance affirmatively, to prove it. And it has also been held that the burden of proof is on the defendant.⁶⁴

It is sometimes held that the defendant is estopped to set up non-compliance because of his dealings with the corporation;⁶⁵ as where he is a mortgagor and the foreign corporation mortgagee.⁶⁶

226; *Charles Roome Parmele Co. v. Haas*, 171 N. Y. 579, 64 N. E. 440; *Campbell P. P. & M. Co. v. Herring*, 139 Pa. 473, 20 Atl. 1061 (*semble*); *Acme Mercan. Agency v. Rochford*, 10 S. D. 203, 72 N. W. 466, 65 A. S. R. 714.

⁶⁰ *Gull River Lumber Co. v. Keefe*, 6 Dak. 160, 41 N. W. 743.

⁶¹ *Collier v. Davis*, 94 Ala. 456, 10 So. 86; *Thomas v. Remington Paper Co.*, 67 Kan. 599, 73 Pac. 909; *Zion C. M. Ass. v. Mayo*, 22 Mont. 100, 55 Pac. 915; *Jung Brewing Co. v. Levisy*, (Tenn. Ch.) 37 S. W. 889.

⁶² *Washington N. B. L. & I. Assoc. v. Stanley*, 38 Ore. 319, 63 Pac. 489, 84 A. S. R. 793, 58 L. R. A. 816.

⁶³ *Washington C. M. I. Co. v. Chamberlin*, 16 Gray (Mass.), 165; and see *Dundee M. T. & I. Co. v. Nixon*, 95 Ala. 318, 10 So. 311; *John A. Roebeling's Sons Co. v. Belden*, 26 App. Div. 624, 49 N. Y. S. 933.

⁶⁴ *Coppedge v. M. K. Goetz Brewing Co.*, 67 Kan. 851, 73 Pac. 908.

⁶⁵ *Washburn Mill Co. v. Bartlett*, 3 N. D. 138, 54 N. W. 544; *Rathbone, Sard & Co. v. Frost*, 9 Wash. 162, 39 Pac. 298; *La France Fire Engine Co. v. Mt. Vernon*, 9 Wash. 142, 37 Pac. 287.

⁶⁶ *Spinney v. Miller*, 114 Iowa 210, 86 N. W. 317, 89 A. S. R. 351.

§ 257. Proof of incorporation.

If the defendant wishes to raise the point that the plaintiff is not legally incorporated, he must do so by a plea.⁶⁷ Upon such a plea the plaintiff proves a *prima facie* case by showing its existence as a *de facto* corporation;⁶⁸ which it does by showing a copy of its charter, if it was incorporated by a special act of the legislature, together with corporate acts done under the charter;⁶⁹ or if it was incorporated under a general law, by proving the statute, and the certificate of the proper State officer purporting to be issued in accordance with it.⁷⁰ In one case the general statute does not seem to have been proved;⁷¹ but this cannot properly be omitted.

It is usually provided by statute that where a certified copy of the charter of a foreign corporation is filed with the Secretary of State, a copy of it shall be accepted as *prima facie* evidence of incorporation; and this would probably be the law without express statutory provision to that effect.⁷²

A person dealing with a foreign corporation as such will be estopped to allege that it is not a corporation;⁷³ if the facts which give rise to the estoppel appear in the previous pleadings, the corporation may take advantage of the estoppel on demurrer, otherwise it must allege the facts giving rise to the estoppel in a replication.⁷⁴

⁶⁷ *Oregonian Ry. v. Oregon Ry. & Nav. Co.*, 22 Fed. 245, 10 Sawy. 470.

⁶⁸ *Cozzens v. Chicago H. P. B. Co.*, 166 Ill. 213, 46 N. E. 788; *Barrett v. Mead*, 10 All. (Mass.) 337.

⁶⁹ *Lancaster Sav. Bank v. Elwell*, 17 Wash. 446, 49 Pac. 1070.

⁷⁰ *Savage v. Russell & Co.*, 84 Ala. 103, 4 So. 235; *Cozzens v. Chicago H. P. B. Co.*, 166 Ill. 213, 46 N. E. 788; *Barrett v. Mead*, 10 All. (Mass.) 337; *Anglo A. L. M. & A. Co. v. Dyar*, 181 Mass. 593, 64 N. E. 416.

⁷¹ *United States Vinegar Co. v. Schlegel*, 67 Hun, 356, 22 N. Y. S. 407.

⁷² *Knoxville Nursery Co. v. Com.*, 21 Ky. L. Rep. 1483, 55 S. W. 691; *Com. v. Corkery*, 175 Mass. 460, 56 N. E. 711; *Knapp, Burrell & Co. v. Strand*, 4 Wash. 686, 30 Pac. 1063.

⁷³ *Greenville v. Greenville Waterworks Co.*, 125 Ala. 625, 27 So. 764.

⁷⁴ *Oregonian Ry. v. Oregon Ry. & Nav. Co.*, 22 Fed. 245, 10 Sawy. 470.

CHAPTER XI

SUITS AGAINST CORPORATIONS.

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| <p>§ 261. Foreign corporation cannot be sued without its consent.</p> <p>262. Theory of suit on ground of natural justice.</p> <p>263. Theory of suit on ground of presence.</p> <p>264. Foreign corporation may be sued by its consent.</p> <p>265. Appointment of agent to receive service of process.</p> <p>266. Implied consent by accepting conditional admission.</p> <p>267. Failure to comply with the statute and appoint agent.</p> <p>268. Service on the designated agent only.</p> <p>269. Statute must be exactly followed.</p> <p>270. Service on agent temporarily in the State.</p> <p>271. What agents may be served.</p> <p>272. Officer of the corporation.</p> | <p>§ 273. Managing agent.</p> <p>274. Local agent.</p> <p>275. Agent of railroad or steamboat company.</p> <p>276. Agent of insurance company.</p> <p>277. Agent of newspaper company.</p> <p>278. Agent under the English practice.</p> <p>279. Jurisdiction dependent on corporation doing business in State.</p> <p>280. Jurisdiction extends to all causes of action.</p> <p>281. Withdrawal of authority to receive service.</p> <p>282. Appearance in the suit.</p> <p>283. Jurisdiction <i>in rem</i>.</p> <p>284. Jurisdiction for garnishment.</p> <p>285. Who may sue a foreign corporation.</p> <p>286. Statute of limitations.</p> |
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§ 261. Foreign corporation cannot be sued without its consent.

Though there is no legal difficulty in permitting a foreign corporation to sue, it is much more difficult to obtain jurisdiction over such a corporation in order to subject it to suit. A court can acquire jurisdiction over a defendant in order to subject him to its orders only by personal service, by his consent, or by his allegiance. Since the domicile of a corporation and its nationality as well can be referred only to the State of charter,¹ it is impossible to obtain jurisdiction over

¹ *Ante*, § 71.

a foreign corporation on the last ground.² But it is equally impossible to serve process personally on a foreign corporation. An ordinary agent does not carry with him the personality of the corporation; he is like the agent of a private individual, and jurisdiction cannot be obtained over an absent individual by serving process on his agent. It follows that there is no way of suing a foreign corporation without its consent to the suit.³

§ 262. Theory of suit on ground of natural justice.

But this doctrine, though technically sound, seems inherently unjust. "This doctrine of the exemption of a corporation from suit in a State other than that of its creation was the cause of much inconvenience, and often of manifest injustice. The great increase in the number of corporations of late years, and the immense extent of their business, only made this inconvenience and injustice more frequent and marked. . . . Whilst the theoretical and legal view, that the domicile of a corporation is only in the State where it is created, was admitted, it was perceived that when a foreign corporation sent its officers and agents into other States and opened offices, and carried on its business there, it was, in effect, as much represented by them there as in the State of its creation. As it was protected by the laws of those States, allowed to carry on its business within their borders, and to sue in their courts, it seemed only right that it should be held responsible in those courts to obligations and liabilities there incurred."⁴

A few courts, influenced by this seeming injustice, held a foreign corporation suable.⁵ "If we recognize their existence

² Service by publication is therefore ineffectual to bind the corporation personally, *King v. Sullivan*, 93 Ga. 621, 20 S. E. 76.

³ *Middlebrooks v. Springfield F. I. Co.*, 14 Conn. 301; *Peckham v. North Parish*, 16 Pick. (Mass.) 274 (*semble*); *Moulin v. Trenton M. L. & F. Ins. Co.*, 24 N. J. L. 222; *McQueen v. Middleton Mfg. Co.*, 16 Johns. (N. Y.) 5.

⁴ *Field, J.*, in *St. Clair v. Cox*, 106 U. S. 350, 27 L. ed. 222.

⁵ *St. Louis P. I. Co. v. Cohen*, 9 Mo. 416 (*semble*); *Libbey v. Hodgdon*, 9 N. H. 394.

for the one purpose, we must also for the other. If we admit and vindicate their rights, even-handed justice requires that we also enforce their liabilities; and not send our citizens to a foreign jurisdiction in quest of redress for injuries committed here." ⁶

The answer to this argument, is, of course, that it is only because the State wills it that the foreign corporation can do business and sue. The State permits this, as a matter of grace; but having so permitted it, the State cannot now demand a consideration for its gift. If the State chooses to forbid the corporation these privileges, it may do so; the law no more requires the State to favor the corporation than permits it to enforce an illegal jurisdiction over it.

§ 263. Theory of suit on ground of presence.

Another ground on which jurisdiction has been exercised over a foreign corporation against its will is that a corporation is present and may be found and personally served with process where its agents are doing business. "A corporation being an artificial being, can act only through agents, and only through them can be reached, and process must, therefore, be served upon them. In the State where a corporation is formed it is not difficult to ascertain who are authorized to represent and act for it. Its charter or the statutes of the State will indicate in whose hands the control and management of its affairs are placed. Directors are readily found, as also the officers appointed by them to manage its business. But the moment the boundary of the State is passed difficulties arise; it is not so easy to determine who represent the corporation there, and under what circumstances service on them will bind it. . . .

"All that there is in the legal residence of a corporation in the State of its creation consists in the fact that by its laws the corporators are associated together and allowed to exercise

⁶ Wilcox, J., in *Libbey v. Hodgdon*, *supra*.

as a body certain functions, with a right of succession in its members. Its officers and agents constitute all that is visible of its existence; and they may be authorized to act for it without as well as within the State. There would seem, therefore, to be no sound reason why, to the extent of their agency, they should not be equally deemed to represent it in the States for which they are respectively appointed when it is called to legal responsibility for their transactions. The case is unlike that of suits against individuals. They can act by themselves, and upon them process can be directly served, but a corporation can only act and be reached through agents. Serving process on its agents in other States, for matters within the sphere of their agency, is, in effect, serving process on it as much so as if such agents resided in the State where it was created." ⁷

This doctrine appears to have been accepted in a few American jurisdictions, where on the ground expressed it was held that a foreign corporation was subject to the jurisdiction of the courts by service on its agents within the State.⁸ And it is the accepted doctrine in England and the English colonies, where it is said that a foreign corporation doing business within the country is there resident.⁹ The statute permitting service of process on certain officers or agents of a corporation applies to "corporations established by foreign law which are carrying on business, and therefore are resident, in England, and are submitting themselves to the laws of this country. . . . I think that when a foreign corporation, established by foreign law, sets up an office in England and carries on one of the principal parts of its business here, it ought to be considered as resident in England, and be treated as if it were established by English law." ¹⁰

The objection to this doctrine is, in the words of Mr. Jus-

⁷ Field, J., in *St. Clair v. Cox*, 106 U. S. 350, 27 L. ed. 222.

⁸ *Day v. Essex County Bank*, 13 Vt. 97.

⁹ *Ante*, §§ 74, 76

¹⁰ Cotton, L. J., in *Haggin v. Comptoir d'Escompte*, 23 Q. B. Div. (C. A.) 519, 522. See, to the same effect, *Nutter v. Messageries Maritimes*, 54 L. J. Q. B. 527.

tice Field, that "the principle that a corporation must dwell in the place of its creation, and cannot, as said by Mr. Chief Justice Taney, migrate to another sovereignty, coupled with the doctrine that an officer of the corporation does not carry his functions with him when he leaves his State, prevented the maintenance of personal actions against it." ¹¹ It is true that a corporation can be sued only by service of process upon some person acting for it; but that does not prove that it may always be sued in that way. Individuals may represent corporations in two ways; as ordinary agents, or as officers. The relation of an ordinary agent to a corporation is the same as that of an agent to an individual principal; and it is impossible to obtain personal service on a principal by service on his agent. Therefore service on an ordinary agent of a corporation is not personal service on the corporation. An officer bears a different relation to the corporation; he is legally a part of it, and service which reaches an officer in his official capacity reaches the corporation itself, and is personal service upon it. But an officer of a corporation cannot carry his official capacity outside the State of charter; he may represent the corporation abroad as agent, but not as officer. Consequently service of process on even an officer of a foreign corporation is not personal service on the corporation.

It is true that a domestic corporation may be properly sued after service on an ordinary agent. But in the State of charter it is not essential to have personal service on a corporation in order to obtain jurisdiction over it. The State has jurisdiction from the fact of its creation of the corporation; service of process is not necessary to obtain jurisdiction, but only to carry out due process of law by giving to the corporation sufficient notice of the suit and opportunity to be heard, since a State's law of procedure "must not encroach upon that principle of natural justice which requires notice of a suit to a party before he can be bound by it." ¹²

¹¹ *St. Clair v. Cox*, 106 U. S. 350, 27 L. ed. 222.

¹² Field, J., in *St. Clair v. Cox*, *supra*.

§ 264. Foreign corporation may be sued by its consent.

But the difficulty is by no means impossible of solution. Since a foreign corporation may do business in a State only by permission of the State, and that permission may be given on condition, the consent of the corporation to be sued may be imposed as a condition; and having obtained jurisdiction over the corporation by its consent, the State may then make such regulations for the service of process as it pleases, provided they conform to the constitutional requirement of due process of law.¹³ And no contract between the corporation and the party with whom it deals will be allowed to exempt the corporation from suit.¹⁴

“A corporation of one State cannot do business in another State without the latter’s consent, express or implied, and that consent may be accompanied with such conditions as it may think proper to impose. . . . The State may, therefore, impose as a condition upon which a foreign corporation shall be permitted to do business within her limits, that it shall stipulate that in any litigation arising out of its transactions in the State, it will accept as sufficient the service of process on its agents or persons specially designated; and the condition would be eminently fit and just. And such condition and stipulation may be implied as well as expressed. If a State permits a foreign corporation to do business within her limits, and at the same time provides that in suits against it for business there done, process shall be served upon its agents, the provision is to be deemed a condition of the permission; and corporations that subsequently do business in the State are to be deemed to assent to such condition as fully as though they had specially authorized their agents to receive service of the process. Such condition must not, however, encroach

¹³ *Lafayette Ins. Co. v. French*, 18 How. 404, 15 L. ed. 899; *Fireman’s Ins. Co. v. Thompson*, 155 Ill. 204, 40 N. E. 488; *Reyer v. Odd Fellows’ Acc. Assoc.*, 157 Mass. 367, 32 N. E. 469, 34 A. S. R. 288; *Compagnie Générale Transatlantique v. Law*, [1899] A. C. 431. See *ante*, § 74.

¹⁴ *Field v. Eastern B. & L. Assoc.*, (Ia.) 90 N. W. 717.

upon that principle of natural justice which requires notice of a suit to a party before he can be bound by it. It must be reasonable, and the service provided for should be only upon such agents as may be properly deemed representatives of the foreign corporation."¹⁵

Service on the designated agent, of course, confers jurisdiction over the corporation, and the judgment is everywhere binding on the corporation to the full extent to which it would be binding on an individual defendant legally served.¹⁶

§ 265. Appointment of agent to receive service of process.

In almost every State a foreign corporation is now required to give its express consent to be sued, by appointing an agent for service of process upon it, before doing business in the State.¹⁷ The statute may require the selection of some real agent of the corporation, or the acceptance of a State official for that purpose. In either case the designation of the agent is of course an express consent to be sued. And after a foreign corporation has complied with the law, the State may alter the law and provide for service on other persons. This is not in conflict with the Constitution of the United States.¹⁸

In naming an agent, it is enough to designate him by his office; as "the general manager in Denver";¹⁹ "the superintendent of insurance."²⁰ It seems that if a partnership is named, either partner or a surviving or continuing partner could be served.²¹

¹⁵ Field, J., in *St. Clair v. Cox*, 106 U. S. 350, 27 L. ed. 222.

¹⁶ *Weymouth v. Washington G. & A. R. R.*, 1 McAr. (Dist. Colum.) 19; *Green v. Equit. Mut. Life & Endow. Ass.*, 105 Iowa, 628, 75 N. W. 635; *State v. N. A. Land & Timber Co.*, 106 La. 621, 31 So. 172; *McNichol v. United States M. R. Agency*, 74 Mo. 457; *Gibbs v. Queen Ins. Co.*, 63 N. Y. 114, 20 A. R. 513.

¹⁷ The statute of each State on this subject will be found in Chapter VII.

¹⁸ *Connecticut M. L. I. Co. v. Spratly*, 99 Tenn. 322, 42 S. W. 145, 44 L. R. A. 442; affirmed, 172 U. S. 602, 43 L. ed. 569.

¹⁹ *Goodwin v. Colorado M. I. Co.*, 110 U. S. 1, 28 L. ed. 47.

²⁰ *Laffin v. Travelers' Ins. Co.*, 121 N. Y. 713, 24 N. E. 934.

²¹ *Gibson v. Manufacturers' F. & M. I. Co.*, 144 Mass. 81, 10 N. E. 729.

§ 266. Implied consent by accepting conditional admission.

The consent to be sued may be implied from the conduct of the foreign corporation. If the law of the State provides that a foreign corporation doing business in the State shall be suable in its courts after process served in a prescribed manner, this is to be regarded as an expression of the will of the State that a foreign corporation shall do business in the State only on condition it consents to be sued. If then, the foreign corporation does business in the State, its conduct implies a consent to the condition upon which the State offered it permission to do business. Since consent is given by acts, not by mere thoughts or words, this implied consent is as real as consent expressed by spoken or written words. Not the words themselves, but the act of speaking or writing them, is the legal consent; and the act of doing business in acceptance of a conditional offer is equally an act of consent to the terms of the offer thus accepted. A foreign corporation which does business in a State after the passage of a statute providing for suit against such a corporation may therefore be sued in the way provided for in the statute.²²

So where a foreign railroad corporation is admitted to do business in the State under a special act which provides that it may be served just as a domestic corporation, such service is good when the corporation has accepted the act.²³

The condition that a foreign corporation, if it does business in the State, shall consent to be sued need not be expressed in the statute. It may as well be found from an interpretation of all the legislation of the State as from the express language of any particular statute.²⁴

²² *Smith v. Empire S. I. M. & D. Co.*, 127 Fed. 462; *Western U. T. Co. v. Pleasants*, 46 Ala. 641; *City F. I. Co. v. Carrugi*, 41 Ga. 660; *Alabama G. S. R. R. v. Fulghum*, 87 Ga. 263, 13 S. E. 649; *Milwaukee T. Co. v. Germania Ins. Co.*, 106 La. 669, 31 So. 298; *National C. M. Co. v. Brandenburg*, 40 N. J. L. 112; *Walker v. Continental Ins. Co.*, 2 Utah, 331. See *ante*, § 74.

²³ *Quade v. N. Y. N. H. & H. R. R.*, 39 N. Y. St. Rep. 157, 14 N. Y. St. 875.

²⁴ *Barrow S. S. Co. v. Kane*, 170 U. S. 100, 42 L. ed. 964.

§ 267. Failure to comply with the statute and appoint agent.

If the foreign corporation does business in the State without appointing an agent to receive service of process, how may it be reached? The better view would seem to be, that such a statute really includes two things; the imposition of a condition that the foreign corporation, if it comes in the State to do business, shall consent to be sued, and a provision as to the method of suit. If the corporation then comes in to do business it has impliedly consented to the jurisdiction of the courts. If notwithstanding this consent it has not designated an agent to receive service of process, it would be permissible to serve process in accordance with the general law regulating process against corporations. On this theory it is held that if the foreign corporation does business without designating its agent to receive service, process may be served, in accordance with the local practice, on any resident agent.²⁵

If the State statute requires the designation of a State official as agent of the company to receive service, and the corporation though it does business within the State fails to designate such official, may it nevertheless be sued by service on the official? It has been so held, on the ground that the company is estopped to deny that it has done its legal duty and designated the official.²⁶ But this decision appears to be unsound for two reasons: first, the jurisdiction depends upon actual consent, and consent assumed on the ground of estoppel must always be fictitious; secondly, there is no provision in the local law of procedure for service on the State officer except after the filing of consent. On this ground it has been held, more properly, that service on the State official

²⁵ *Moch v. Virginia F. & M. Ins. Co.*, 10 Fed. 696; *Funk v. Anglo-Amer. Ins. Co.*, 27 Fed. 336; *American G. M. Co. v. Giant Powder Co.*, 1 Alaska, 664; *Thomas v. Placerville G. Q. M. Co.*, 65 Cal. 600; *St. Louis & S. F. Ry. v. De Ford*, 38 Kan. 299; *Hagerman v. Empire Slate Co.*, 97 Pa. 534.

²⁶ *Ehrman v. Ins. Co.*, 1 McCr. 123, 1 Fed. 471; *Mason's F. A. Assoc. v. Riley*, 60 Ark. 578, 31 S. W. 148.

does not bind the company.²⁷ Under these circumstances the preferable method would be (as generally) to permit service on the corporation in accordance with the general law as to service on ordinary corporations.

§ 268. Service on the designated agent only.

If a foreign corporation has designated an agent on whom process may be served, in accordance with the statute, it has presumably performed the required condition, and will not be taken to have consented to the service of process in any other manner. It follows that when an agent has been designated by the corporation, service on any other person, though he also may be an agent, will not be sufficient.²⁸

But it is of course possible for a State to require both the appointment of an agent for the special purpose of suit, and also submission to the general statute regulating service of process; and in that case, therefore, the foreign corporation may be sued by either method.²⁹ And so when a State statute has required the designation of an agent to receive process, and a subsequent statute, not exclusive in its terms, requires the appointment of the State commissioner of insurance, service on the agent designated under the earlier statute will confer jurisdiction.³⁰

The designated agent may be served with process wherever

²⁷ *Rothrock v. Dwelling-House Ins. Co.*, 161 Mass. 423, 37 N. E. 206, 42 A. S. R. 418, 23 L. R. A. 863.

²⁸ *So. Bldg. & Loan Ass. v. Hallum*, 59 Ark. 583, 28 S. W. 420; *Union G. & T. Co. v. Craddock*, 59 Ark. 593, 28 S. W. 424; *Venner v. Denver Union Water Co.*, 15 Colo. App. 495, 63 Pac. 1061; *Oland v. Agricultural Ins. Co.*, 69 Md. 248, 14 Atl. 669; *Thayer v. Tyler*, 10 Gray, (Mass.) 164; *Baile v. Equitable F. I. Co.*, 68 Mo. 617; *Liblong v. Kansas F. I. Co.*, 82 Pa. 413.

²⁹ *Henrietta M. & M. Co. v. Johnson*, 173 U. S. 221, 43 L. ed. 268; *Mutual R. F. L. Assoc. v. Cleveland Woolen Mills*, 82 Fed. 508; *Lesser Cotton Co. v. Yates*, 69 Ark. 396, 63 S. W. 997; *Quade v. New York, N. H. & H. R. R.*, 14 N. Y. S. 875, 39 N. Y. St. Rep. 157; *Howard v. Prudential Ins. Co.*, 1 App. Div. 135, 37 N. Y. S. 832.

³⁰ *Green v. Equit. Mut. Life & Endow. Ass.*, 105 Iowa, 628, 75 N. W. 635.

he may be found in the State; it is not necessary to serve him at the designated place of business.³¹

§ 269. Statute must be exactly followed.

Since jurisdiction over a foreign corporation depends upon statutes, it follows naturally that the statutory requirements for service must be followed exactly.³² Thus if the State requires service on a managing or business agent, a return on a subpoena, indorsed that it had been served on H. "agent for" the corporation is bad.³³ And when statute allows service "by delivering a copy to the secretary of state," service on the deputy secretary when the secretary was out of the State was insufficient.³⁴ And so as to service on deputy insurance commissioner.³⁵ And if the statute requires personal service on the State superintendent of insurance, service on him by mail is bad.³⁶ And if the statute provides for service on the State auditor in suits between residents and a foreign corporation, jurisdiction is not obtained by service on him in an action by the agent of the corporation against the corporation.³⁷

§ 270. Service on agent temporarily in the State.

An agent or officer of the corporation temporarily within the State on his own business, not on business of the corporation, whether he be the president or other officer, or an inferior agent, is not a person who may be served with process

³¹ Littlejohn v. Southern Ry., 45 S. C. 96, 22 S. E. 761.

³² Farmer v. Nat. Life. Ass., 50 Fed. 829; New River Mineral Co. v. Seeley, 120 Fed. 193; Sobrio v. Manhattan Life Ins. Co., 72 Fed. 566; So. Bldg. & Loan Ass. v. Hallum, 59 Ark. 583, 28 S. W. 420; St. Paul German Ins. Co. v. Craddock, 59 Ark. 593, 28 S. W. 424; Venner v. Denver Union Water Co., 15 Colo. App. 495, 63 Pac. 1061; Wagner v. Shank, 59 Md. 313; Loukey v. Keyes Silver Mining Co., 21 Nev. 312, 31 Pac. 57; Coolidge v. American Realty Co., 92 App. Div. 622, 86 N. Y. S. 318.

³³ Sobrio v. Manhattan Life Ins. Co., 72 Fed. 566.

³⁴ Loukey v. Keyes Silver Mining Co., 21 Nev. 312, 31 Pac. 57.

³⁵ Old Wayne Mut. Life Ass. v. Flynn, (Ind. App.) 66 N. E. 57.

³⁶ Farmers' Nat. Life Ass., 50 Fed. 29.

³⁷ Byers v. Union Central Life Ins. Co., 17 Ind. App. 101, 46 N. E. 475.

so as to bind the corporation.³⁸ In the words of the Supreme Court of Michigan, in a case in which it had been attempted to get jurisdiction over a Canada corporation by service on its treasurer, temporarily in Michigan: "The corporate entity could by no possibility enter the State, and it could do nothing more in that direction than to cause itself to be represented here by its officers or agents. Such representation would, however, necessarily imply something more than the mere presence here of a person possessing, when in Canada, the relation to the company of an officer or agent. To involve the representation of the company here, the supposed representative would have to hold or enjoy in this State an actual present official or representative status. He would be required to be here as an agent or officer of the corporation, and not as an isolated individual. If he should drop the official or representative character at the frontier, if he should bring that character no further than the territorial boundary of the government to whose laws the corporate body itself, and consequently the official positions of its officers also, would be constantly indebted for existence, it could not, with propriety, be maintained that he continued to possess such character by force of our statute. Admitting, therefore, for the purpose of this suit, that in given cases the foreign corporation would be bound by service on its treasurer in Michigan, this could

³⁸ *St. Clair v. Cox*, 106 U. S. 350, 27 L. ed. 222; *Fitzgerald C. Co. v. Fitzgerald*, 137 U. S. 98, 34 L. ed. 608; *Carpenter v. Air Brake Co.*, 32 Fed. 434; *Clews v. Iron Co.*, 44 Fed. 31; *Reifsnider v. American I. P. Co.*, 45 Fed. 433; *Fidelity T. & S. V. Co. v. Mobile St. Ry.*, 53 Fed. 850; *United States Graphite Co. v. Pacific Graphite Co.*, 68 Fed. 442; *Mecke v. Valletown Mineral Co.*, 93 Fed. 697; *Eirich v. Donnelly Contracting Co.*, 104 Fed. 1; *Reilly v. Philadelphia & R. Ry.*, 109 Fed. 349; *Conley v. Mathieson Alkali Works*, 110 Fed. 730; *Scott v. Stockholders Oil Co.*, 122 Fed. 835; *Fox v. Mining Co.*, 108 Cal. 369, 41 Pac. 308; *Midland P. Ry. v. McDermid*, 91 Ill. 170; *Newell v. Great Western Ry.*, 19 Mich. 336; *State v. District Court*, 26 Minn. 233; *Latimer v. Union Pac. Ry.*, 43 Mo. 105, 97 A. D. 378; *Moulin v. Ins. Co.*, 24 N. J. L. 222; *Aldrich v. Anchor C. & D. Co.*, 24 Ore. 32, 32 Pac. 756, 41 A. S. R. 831; *Phillips v. Burlington Library Co.*, 141 Pa. 462, 21 Atl. 640, 23 A. S. R. 304; *Carstens & Earles v. Leidigh & H. L. Co.*, 18 Wash. 450, 51 Pac. 1051, 63 A. S. R. 906, 39 L. R. A. 548.

only be so when the treasurer, the then official, the officer then in a manner impersonating the company, should be served. Joseph Price was not here as the treasurer of the defendants. He did not then represent them. His act in coming was not the act of the company, nor was his remaining the business or act of any besides himself. He had no principal, and he was not an agent. He had no official status or representative character in this State.”³⁹

Even if the officer casually does or attempts to do something for the corporation, which does not amount to entering into business, he cannot be served. Thus where the president of the foreign corporation came into the State to adjust a business dispute, process could not be served on him;⁴⁰ and so where being in the State on his own business he casually made a business offer for the corporation.⁴¹

Where the corporation does no business in the State, jurisdiction over it cannot be obtained by service on an officer who lives in the State.⁴²

In a few jurisdictions decisions had been made which went further, and allowed suit against a foreign corporation after service upon an officer or agent named in the statute, although such agent or officer was only temporarily within the State.⁴³ In the leading case Judge Earl said: “The object of all service of process is said to be to give notice to the party on whom service is made that he may be aware of and may resist what

³⁹ Graves, J., in *Newell v. Great Western Ry.*, 19 Mich. 336, 344.

⁴⁰ *Good Hope Co. v. Railway B. F. Co.*, 22 Fed. 635; *Louden Machinery Co. v. American M. I. Co.*, 127 Fed. 1008 (but see *Houston v. Filer & H. Co.*, 85 Fed. 757).

⁴¹ *Galveston City R. R. v. Hook*, 40 Ill. App. 547.

⁴² *Schmidlapp v. La Con fiance Ins. Co.*, 71 Ga. 246; *Taft v. Mills*, 5 R. I. 393.

⁴³ *Houston v. Filer & H. Co.*, 85 Fed. 757; *Gravelly v. Southern I. M. Co.*, 47 La. Ann. 389, 16 So. 866; *Payne & Joubert v. East. U. L. Co.*, 109 La. 706, 33 So. 739; *Klopp v. Creston C. G. W. Co.*, 34 Neb. 808, 52 N. W. 819, 33 A. S. R. 666; *Hiller v. Burlington & M. R. R.*, 70 N. Y. 223; *Pope v. Terre Haute, C. & M. Co.*, 87 N. Y. 137; *Jester v. Baltimore S. P. Co.*, 131 N. C. 54, 42 S. E. 447.

is sought of him, and it is a general rule that any service must be deemed sufficient which renders it reasonably probable that the party proceeded against will be appraised of what is going on against him, and have an opportunity to defend.”⁴⁴

These cases, however, must be regarded as overruled by recent decisions of the Supreme Court of the United States, in which it is held that no jurisdiction can thus be obtained over a foreign corporation which does no business in the State.⁴⁵

The present doctrine in New York appears to be that if the corporation is in fact doing business in the State, service of process on an officer temporarily within the State is sufficient;⁴⁶ and there seems to be no reason why such a doctrine should not be enforced, although if the officer is got into the State by fraud or trick, or even unfairly, the service is invalid.⁴⁷ And it would seem to be within the jurisdiction of New York, if a corporation is in fact doing business in the State, to provide for such service. A judgment against a foreign corporation obtained in a New York court after such service has been held valid in another State.⁴⁸

§ 271. What agents may be served.

The statutes of each State settle with some particularity the question, what agents of a foreign corporation may receive service of process when no agent has been designated; and these statutes must be exactly followed.⁴⁹ It is therefore not possible to find a rule which will determine in every jurisdiction the kind of agency which will authorize the agent to receive service for the company. At the same time, there is a general

⁴⁴ *Hiller v. Burlington & M. R. R. R.*, *supra*, at p. 227.

⁴⁵ *Conly v. Mathieson Alkali Works*, 190 U. S. 406, 47 L. ed. 1113.

⁴⁶ *Porter v. Sewall S. C. H. Co.*, 7 N. Y. S. 166, 17 N. Y. Civ. Pro. Rep. 386; *Weston v. Citizens' Nat. Bank*, 64 App. Div. 145, 71 N. Y. S. 827.

⁴⁷ *Frawley B. & W. v. Pennsylvania Casualty Co.*, 124 Fed. 259; *Olean St. Ry. v. Fairmount Construction Co.*, 55 App. Div. 292, 67 N. Y. S. 165.

⁴⁸ *J. B. Watkins L. M. Co. v. Elliott*, 62 Kan. 291, 62 Pac. 1004, 84 A. S. R. 385.

⁴⁹ *Ante*, § 269.

similarity in the statutes, so that the decisions of one State are likely to be of authority in another; and there are one or two general principles which help the interpretation of the statutes.

Perhaps the most important general principle is that where the principal is sought to be bound by notice to or process upon an agent, such agent should sustain such relation to the master, growing out of the character of his employment, as would, *fide et fiducia*, impose upon him the duty to report the fact to his principal or employer.⁵⁰ This is the rule in respect to the law of agency in the matter of an effective notice to an agent to bind the principal.⁵¹

Service on any person in the employ of the corporation is therefore not necessarily sufficient. Service must be on some person having some control of the company's business in the place where service is made, though his field is a small one. Whether the person served is such an agent is a question of fact.⁵²

The following persons have been held proper agents to receive service of process:

The general financial agent of the company;⁵³ the general agent for a considerable territory, as the general western agent;⁵⁴ a local telegraph operator;⁵⁵ a special investigating agent,⁵⁶ or other special agent with independent powers;⁵⁷ a travelling salesman or solicitor⁵⁸ (but not under the Missouri statute, where, as in several States, they are expressly ex-

⁵⁰ *Strain v. Chicago Portrait Co.*, 126 Fed. 831.

⁵¹ 3 Story on Agency, § 140.

⁵² *Norton v. Atchison, T. & S. F. R. R.*, 97 Cal. 388, 30 Pac. 585, 33 A. S. R. 198; *Hester v. Rasin Fertilizer Co.*, 33 S. C. 609, 12 S. E. 563; *Pacific M. L. I. Co. v. Williams*, 79 Tex. 633, 15 S. W. 478.

⁵³ *In re Hohorst*, 150 U. S. 653, 37 L. ed. 1211.

⁵⁴ *Italian-Swiss Agricultural Colony v. Pease*, 194 Ill. 98, 62 N. E. 317.

⁵⁵ *Barnes v. Western U. T. Co.*, 120 Fed. 550.

⁵⁶ *Connecticut M. L. I. Co. v. Spratley*, 172 U. S. 602, 43 L. ed. 569.

⁵⁷ *Nelson Morris Co. v. E. Rehkopf*, (Ky.) 75 S. W. 203.

⁵⁸ *Ryerson v. Steere*, 114 Mich. 352, 72 N. W. 131; *Abbeville E. L. & P. Co. v. Western E. S. Co.*, 61 S. C. 361, 39 S. E. 559, 85 A. S. R. 890, 55 L. R. A. 146.

cepted⁵⁹); a wharfinger;⁶⁰ a sub-agent with power to contract and settle accounts;⁶¹ an attorney, under a statute allowing service on any person who has property of the corporation in his charge;⁶² the resident agent of a building and loan association who receives and remits fines and dues, receives a commission and negotiates loans;⁶³ an agent of a brokerage corporation who receives margins and commissions at an office hired by the corporation, and who transmits directly to the corporation;⁶⁴ a "cashier," and for the purposes of the code one who received the money from sales made by the corporation within the State was regarded as cashier.⁶⁵ The person who was agent in the actual transaction out of which the suit grows is a natural person to serve,⁶⁶ even though he received no compensation for his services and was not regularly employed.⁶⁷

Service of process will not bind a foreign corporation if made on the following persons:

An attorney at law;⁶⁸ a bookkeeper;⁶⁹ the manager of a company from which the defendant rented wires.⁷⁰

A person who is not really employed by the corporation, but is merely an agent by estoppel or by construction of law, is not a proper person to serve.⁷¹

⁵⁹ *Strain v. Chicago Portrait Co.*, 126 Fed. 831.

⁶⁰ *Memphis & C. Packet Co. v. Pikey*, 142 Ind. 304, 40 N. E. 527; *Sievers v. Dalles, P. & A. N. Co.*, 24 Wash. 302, 64 Pac. 539.

⁶¹ *Burgess v. C. Aultman & Co.*, 80 Wis. 292, 50 N. W. 175.

⁶² *Saunders v. Sioux City Nursery Co.*, 6 Utah, 431, 24 Pac. 532.

⁶³ *Pollock v. Carolina Interstate Bldg. & Loan Assn.*, 48 S. C. 65, 25 S. E. 977, 59 A. S. R. 695.

⁶⁴ *Boyd Commission Co. v. Coates*, 24 Ky. L. Rep. 730, 69 S. W. 1090.

⁶⁵ *McCulloh v. Paillard Non-Magnetic Watch Co.*, 14 N. Y. S. 491.

⁶⁶ *Estes v. Belford*, 22 Fed. 275, 23 Blatch. 1.

⁶⁷ *State v. Northwestern E. & L. Assoc.*, 62 Wis. 174.

⁶⁸ *Taylor v. Granite S. P. Assoc.*, 136 N. Y. 343, 32 N. E. 992, 32 A. S. R. 749.

⁶⁹ *New River Mineral Co. v. Seeley*, 120 Fed. 193.

⁷⁰ *Evansville Courier Co. v. United Press*, 74 Fed. 918.

⁷¹ *Gottschalk Co. v. Distilling & C. F. Co.*, 50 Fed. 681; *Doe v. Springfield Boiler Mfg. Co.*, 104 Fed. 684; *Mikolas v. Hiram Walker & Sons*, 73 Minn. 305, 76 N. W. 36; *Coler v. Pittsburg Bridge Co.*, 146 N. Y. 281, 40 N. E. 779.

It is, of course, clear that in a controversy between the corporation and one of its agents, service on that agent is not service on the company. "A statute providing for the service of process upon any agent of a foreign corporation, when sued, need not contain an exception, as to actions brought against it by its agent, that process shall not be served on such agent to render such service void.

"The proposition that, under any circumstances, the defendant to an action may be compelled to appear and answer, or be subjected to a judgment upon a default, upon service of process upon his adversary, is so out of line with all of our ideas of right and the mode of procedure in courts of justice that we cannot for a moment suppose that the legislature ever intended to authorize such a proceeding."⁷² This principle, however, does not prevent service of process against a corporation as garnishee upon the agent who is also the principal defendant.⁷³

§ 273. Officers of the corporation.

Any officer of the corporation (as distinguished from a mere agent) is a proper person to serve, at least if he is doing the business of the corporation within the State. Thus valid service may be made on the president, when he is engaged on the business of the corporation within the State;⁷⁴ and this is true though the company has given up its office, and the president is engaged in settling up the affairs of the company.⁷⁵ So service may be made on a resident director,⁷⁶ and on the superintendent or general manager.⁷⁷

⁷² *Berkshire, C. J.*, in *Rehm v. German I. & S. Inst.*, 125 Ind. 135, 25 N. E. 173.

⁷³ *Cathcart v. Cincinnati, H. & D. Ry.*, 108 Ga. 253, 33 S. E. 875.

⁷⁴ *Revans v. Southern Mo. & A. R. R. Co.*, 114 Fed. 982; *Farrell v. Oregon Gold Min. Co.*, 31 Ore. 463, 49 Pac. 876.

⁷⁵ *American Locomotive Co. v. Dickson Mfg. Co.*, 117 Fed. 972.

⁷⁶ *Meyer v. Pennsylvania L. M. F. I. Co.*, 108 Fed. 169. See *Conly v. Mathieson Alkali Works*, 190 U. S. 406, 47 L. ed. 1113.

⁷⁷ *Rush v. Foos Mfg. Co.*, 20 Ind. App. 515, 51 N. E. 143; *Hess v. Adamant Mfg. Co.*, 66 Minn. 79, 68 N. W. 774; *Norton v. Berlin I. B. Co.*, 51 N. J. L.

§ 273. Managing agent.

A statute passed in many States names the "managing agent" as a person to receive service of process for a foreign corporation. A managing agent does not mean the person who has charge of the whole business of the corporation;⁷⁸ such an agent would probably stay in the State of charter, or at least at the principal office of the company. "It, of course, intends a 'managing agent' in the state; and, where a corporation created by the laws of any other state does business in this state, the person who, as its agent, does that business should be considered its managing agent; and more especially should that be so where the foreign corporation has an office or place of business in this state, and when that office is in charge of that person, and he there acts for the corporation. He is there doing business for it, and so manages its business. Such person is, in every sense of the words used in the statute, 'a managing agent.' "⁷⁹ It means one invested with general powers, involving the exercise of judgment and discretion, as opposed to an ordinary agent, acting in an inferior capacity and under the direction and control of superior authority both as to the extent of the work and the manner of executing it.⁸⁰

"Every object of the service is attained when the agent served is of sufficient character and rank to make it reasonably certain that the defendant will be apprised of the service made. The statute is satisfied if he be a managing agent to any extent."⁸¹

442, 17 Atl. 1079; *Kieley v. Central C. C. M. Co.*, 13 Misc. 85, 34 N. Y. S. 106; *Clinard v. White*, 129 N. C. 250, 39 S. E. 960; *Foster v. Charles Betcher Lumber Co.*, 5 S. D. 57, 58 N. W. 9, 49 A. S. R. 859, 23 L. R. A. 490.

⁷⁸ *Tuchband v. Chicago & A. R. R.*, 115 N. Y. 437, 22 N. E. 360; *Palmer v. Pennsylvania Co.*, 35 Hun, 369; *Taylor v. Granite S. P. Assoc.*, 20 N. Y. S. 135.

⁷⁹ *Danforth, J.*, in *Tuchband v. Chicago & A. R. R.*, 115 N. Y. 437, 22 N. E. 360.

⁸⁰ *Reddington v. Mariposa L. & M. Co.*, 19 Hun, 405.

⁸¹ *Palmer v. Pennsylvania Co.*, 35 Hun, 369.

Under this interpretation it has been held that the general passenger agent in New York City of a foreign railroad is a managing agent;⁸² so is the resident general agent of a foreign newspaper who maintains an office to solicit subscriptions and advertisements.⁸³ But one in charge of an office merely for the transfer of stock and the collection of assessments is not.⁸⁴ Any agent having full discretion in his own field and accounting directly to the company, however limited his field may be, is a managing agent if his duty is connected with carrying on the business of the company.⁸⁵

This broad definition of "managing agent" leaves little difference between that term and the term "local agent," also common in statutes; and indeed a local express agent has been held a managing agent, though there was a State superintendent of the express service.⁸⁶

§ 274. Local agent.

In several statutes, also, a "local agent" has been named as a proper agent for receiving process; and indeed this would usually be so held whether the local agent were expressly named in the statute or not.⁸⁷ A local agent means an agent located in a certain limited district, and not an agent for the

⁸² *Tuchband v. Chicago & A. R. R.*, 115 N. Y. 437, 22 N. E. 360.

⁸³ *Palmer v. Chicago Herald Co.*, 70 Fed. 886; *Brewer v. George Knapp & Co.*, 82 Fed. 694; *Union Associated Press v. Times-Star Co.*, 84 Fed. 419.

⁸⁴ *Reddington v. Mariposa L. & M. Co.*, 19 Hun, 405.

⁸⁵ *Hat Sweat Mfg. Co. v. Davis S. M. Co.*, 31 Fed. 294; *Council B. C. Co. v. Omaha T. M. Co.*, 49 Neb. 537, 68 N. W. 929; *Young & F. Co. v. Welsbach L. Co.*, 55 App. Div. 16, 66 N. Y. S. 1024; *Perrine v. Ransom G. M. Co.*, 60 App. Div. 32, 69 N. Y. S. 698; *Evans v. American S. F. Co.*, 30 Misc. 806, 61 N. Y. S. 922; *Foster v. Charles Betcher Lumber Co.*, 5 S. D. 57, 58 N. W. 9, 49 A. S. R. 859, 23 L. R. A. 490.

⁸⁶ *American Exp. Co. v. Johnson*, 17 Oh. S. 641.

⁸⁷ *Société Foncière v. Milliken*, 135 U. S. 304, 34 L. ed. 208; *Bragdon v. Perkins Campbell Co.*, 82 Fed. 338; *Howard v. Ry.*, 11 D. C. App. 300; *Vermont L. & T. Co. v. McGregor*, 5 Ida. 320, 51 Pac. 102; *Southwestern M. B. Assoc. v. Swenson*, 49 Kan. 449, 30 Pac. 405; *Baldinger v. Rockford Ins. Co.*, 80 Minn. 147, 82 N. W. 1083. See the former practice in Louisiana; *Weight v. Liverpool L. & G. I. Co.*, 30 La. Ann. 1186.

whole State.⁸⁸ Like a managing agent, it means one actually engaged in doing the business of the corporation; a local attorney employed by the corporation to collect claims is not a local agent,⁸⁹ nor is the cashier of a bank employed by an insurance company to collect a single claim.⁹⁰

§ 275. Agent of railroad or steamboat company.

A general agent of a foreign railroad or steamboat company, who occupies the company's office and solicits and accepts freight and sells passenger tickets may be served,⁹¹ provided, of course, the corporation does business in the State, which requires more than the mere selling of tickets and soliciting of freight.⁹² A station agent who accepts freight and sells tickets may also be served.⁹³ But an agent who merely solicits business, but does not sell tickets or make contracts cannot be served.⁹⁴

Service of process cannot be had on the conductor⁹⁵ nor the locomotive driver of a foreign railroad,⁹⁶ nor the captain of a steamboat.⁹⁷

The general manager of a connecting railroad who acts as its general business agent, though holding no direct appointment as such, may be served with process against the railroad

⁸⁸ *Western C. P. & O. Co. v. Anderson*, (Tex.) 79 S. W. 516.

⁸⁹ *Moore v. Freeman's Nat. Bank*, 92 N. C. 590.

⁹⁰ *Flawley B. & W. v. Pennsylvania Casualty Co.*, 124 Fed. 259.

⁹¹ *Denver & R. G. R. R. v. Roller*, 100 Fed. 738, 49 L. R. A. 77; *Fremont, E. & M. V. R. R. v. New York C. & S. L. R. R.*, (Neb.) 92 N. W. 131; *National Bk. of Republic v. New York C. & H. R. R. R.*, 8 W. N. C. (Pa.) 252; *Crawford v. Cunard S. S. Co.*, 8 W. N. C. (Pa.) 567.

⁹² *Doty v. Michigan C. R. R.*, 8 Abb. Pr. (N. Y.) 427; *Sheets v. Chesapeake & O. Ry.*, 25 Pa. Co. Ct. 177.

⁹³ *Brown v. Chicago, M. & S. P. Ry.*, (N. D.) 95 N. W. 154.

⁹⁴ *Maxwell v. Atchison, T. & S. F. R. R.*, 34 Fed. 286; *N. K. Fairbank & Co. v. Cincinnati, N. O. & T. P. Ry.*, 54 Fed. 420; *Wall v. Chesapeake & O. Ry.*, 95 Fed. 398.

⁹⁵ *Grand Trunk Ry. v. Hosmer*, 106 Mich. 248, 64 N. W. 17.

⁹⁶ *Carroll v. New York, N. H. & H. R. R.*, 65 N. J. L. 124, 46 Atl. 708; *Devere v. Delaware, L. & W. R. R.*, 60 Fed. 886, *contra*, interpreting the same New Jersey statute, must be regarded as erroneous.

⁹⁷ *Upper Miss. Tr. Co. v. Whitaker*, 16 Wis. 220.

for which he so acts;⁹⁸ so may an agent of the railroad system of which the defendant corporation is a part.⁹⁹ But an agent in charge of a warehouse erected by several railroads, who has no power to contract for the defendant corporation and cannot be directly controlled by it individually cannot be served;¹⁰⁰ nor can the agent of another railroad, in charge of a station which defendant corporation uses, but not under its control.¹⁰¹

§ 276. Agent of insurance company.

Service of process on a foreign insurance company is often regulated by special statutes. In general it may be said that one is a proper agent to receive service who either places the risk or receives and receipts for the premiums. Thus if one receives and transmits an application and delivers the policy he is an agent to receive service, though he holds no appointment from the company, either acting voluntarily¹⁰² or being employed by a regular agent.¹⁰³ So one who receives and receipts for premiums is an agent who may be served,¹⁰⁴ as for instance in an assessment company the person who receives the assessments.¹⁰⁵ An examining physician is not a proper agent to be served.¹⁰⁶

§ 277. Agent of newspaper company.

A newspaper corporation often maintains in a foreign State a general agency, in charge of a man employed by it directly, who has general oversight over its interests. Such a person

⁹⁸ *Norton v. Atchison, T. & S. F. R. R.*, 61 Fed. 618.

⁹⁹ *Van Dresser v. Oregon Ry. & Nav. Co.*, 48 Fed. 202.

¹⁰⁰ *Mexican Cent. Ry. v. Pinkney*, 149 U. S. 194, 37 L. ed. 699.

¹⁰¹ *Texas & P. Ry. v. Neal*, (Tex. Civ. App.) 33 S. W. 693.

¹⁰² *Noble v. Mitchell*, 100 Ala. 519, 14 So. 584, 25 L. R. A. 238.

¹⁰³ *Southern Ins. Co. v. Wolverton Hardware Co.*, (Tex.) 19 S. W. 615.

¹⁰⁴ *Reyer v. Odd Fellows F. A. Assoc.*, 157 Mass. 367, 32 N. E. 469, 34 A. S. R. 288; *Ætna L. I. Co. v. Hanna*, 81 Tex. 487, 17 S. W. 35.

¹⁰⁵ *Modern Woodmen of America v. Noyes*, 158 Ind. 503, 64 N. E. 21; *Voorheis v. People's M. B. Soc.*, 86 Mich. 31, 48 N. W. 1088; *State v. United States M. A. Assoc.*, 67 Wis. 624, 31 N. W. 229.

¹⁰⁶ *Fulton v. Commerical T. M. A. Assoc.*, 172 Pa. 117, 33 Atl. 324.

is a proper agent to serve.¹⁰⁷ But a mere travelling agent for the soliciting of advertisements or subscriptions is not a proper person to serve,¹⁰⁸ nor is any soliciting agent or advertising agent who has no power to make contracts.¹⁰⁹ And on the other hand one who conducts a newspaper advertising agency for a number of newspapers, including the defendant, puts the name of defendant's paper on his door, and is described as its advertising manager, but has power to make contracts only for advertising, is not a proper person to serve.¹¹⁰ A person who occasionally sends news to the defendant is obviously not its agent for service of process.¹¹¹

§ 278. Agent under the English practice.

Under the English and British Colonial practice, the service must be upon the manager of a branch office,¹¹² and not upon a mere agent, on the one hand,¹¹³ or on the other hand upon an independent broker, though his business may be confined to acting for the corporation.¹¹⁴ The agent must be doing business in the colony in order to permit its courts to take jurisdiction. Thus, though by statute service could be made in New South Wales on a Queensland writ for breach of a contract made and to be performed in Queensland, it was held that the writ could not be served on a New South Wales agent of a Queensland corporation. The court said: "There may be a domicile in Sydney for the purpose of giving the Court of New South Wales jurisdiction over the defendant, but there is

¹⁰⁷ *Palmer v. Chicago Herald Co.*, 70 Fed. 886; *Brewer v. George Knapp & Co.*, 82 Fed. 694; *Union Associated Press v. Times-Star Co.*, 84 Fed. 419.

¹⁰⁸ *Boardman v. S. S. McClure Co.*, 123 Fed. 614.

¹⁰⁹ *Locke v. Chicago Chronicle Co.*, 107 Ia. 390, 78 N. W. 49.

¹¹⁰ *Vitolo v. Bee Publishing Co.*, 66 App. Div. 582, 73 N. Y. S. 273.

¹¹¹ *Evansville Courier Co. v. United Press*, 74 Fed. 918.

¹¹² *Bowden v. Imperial M. & T. I. Co.*, 2 New So. Wales St. Rep. (Law) 257.

¹¹³ *Bendall v. Oceanic S. N. Co.*, 17 New So. Wales W. N. 157.

¹¹⁴ *The Princesse Clémentine*, [1897] P. 18; *Glanville v. J. B. Lippincott Co.*, 17 New So. Wales W. N. 74. But see *Lambe v. Dewhurst & Son*, 16 Quebec S. C. 326.

no authority to show that this Court can recognize such domicile for the purpose of service."¹¹⁵

§ 279. Jurisdiction dependent on corporation doing business in State.

In all the cases heretofore considered it will be noticed that jurisdiction is dependent on the fact that the corporation has come into the State to do business. If the corporation does not do business in the State it cannot be sued.¹¹⁶

§ 280. Jurisdiction extends to all causes of action.

It is generally held that if a corporation does business within a State and thereby consents to be sued in the courts of that State, the consent is not confined to causes of action arising within the State, but that the corporation may there be sued upon any transitory cause of action, whether in contract or in tort, no matter where it arose.¹¹⁷ But in a few States it is

¹¹⁵ *Woodward v. Goold Bicycle Co.*, 9 Queensl. L. J. 28, 31, *per* Cooper, J.

¹¹⁶ *St. Clair v. Cox*, 106 U. S. 350, 27 L. ed. 222; *Goldey v. Morning News*, 156 U. S. 518, 39 L. ed. 517; *Good Hope Co. v. Railway B. F. Co.*, 22 Fed. 635; *Golden v. Morning News*, 42 Fed. 112; *Bentlif v. London & C. F. Corp.*, 44 Fed. 667; *Clews v. Iron Co.*, 44 Fed. 31; *Reifsnider v. American I. P. Co.*, 45 Fed. 433; *Doe v. Springfield B. & M. Co.*, 104 Fed. 684; *Boardman v. S. S. McClure Co.*, 123 Fed. 614; *Frawley, B. & W. v. Pennsylvania Casualty Co.*, 124 Fed. 259; *Central G. & S. Exchange v. Board of Trade*, 125 Fed. 463; *Earle v. Chesapeake & O. Ry.*, 127 Fed. 235; *Crane v. Hibbard*, 66 Ark. 282, 50 S. W. 503; *Eureka Mercantile Co. v. California Ins. Co.*, 130 Cal. 153, 62 Pac. 393; *Lathrop v. Union Pacific R. R.*, 7 Dist. Col. 111; *Dallas v. Atlantic, M. & O. R. R.*, 2 McAr. (Dist. Col.), 146; *King v. Sullivan*, 93 Ga. 621, 20 S. E. 76; *Greaves v. Posner*, 111 Ia. 651, 82 N. W. 1022; *Watkins L. M. Co. v. Elliott*, 62 Kan. 291, 62 Pac. 1004, 84 A. S. R. 385; *Crook v. Girard Iron Co.*, 87 Md. 138, 39 Atl. 94, 67 A. S. R. 325; *Walter A. Zelnicker Supply Co. v. Mississippi C. O. Co.* (Mo. App.), 77 S. W. 321; *Camden R. M. Co. v. Swede Iron Co.*, 32 N. J. L. 15; *Polhemus v. Holland Trust Co.*, 59 N. J. Eq. 93, 45 Atl. 534; *Tillinghast v. Boston & P. R. L. Co.*, 38 S. C. 319, 17 So. 33; *Bradley v. Burnett*, (Tex. Civ. App.) 40 S. W. 170; *Northwestern Iron Co. v. Central Trust Co.*, 90 Wis. 570, 63 N. W. 752.

¹¹⁷ *Barrow S. S. Co. v. Kane*, 170 U. S. 100, 42 L. ed. 964; *Gray v. Taper-Sleeve Pulley Works*, 16 Fed. 436; *Smith v. Empire S. I. M. & D. Co.*, 127 Fed. 462; *New Orleans, J. & G. N. R. R. v. Wallace*, 50 Miss. 244; *Insurance Co. v. McLimans*, 28 Neb. 653, 44 N. W. 991; *Flynn v. Central R. R.*, 22

held that the consent is only to be sued on a cause of action arising out of business done within the State, or at least on one arising within the State, and therefore that suit cannot be brought on an obligation which has no connection with the State.¹¹⁸

If a foreign corporation is subject to the jurisdiction of the court, it may be sued on any cause of action arising in the jurisdiction, though the cause of action does not arise out of the regular legal business of the company; as for example for a libel published by the company.¹¹⁹ So when a foreign insurance corporation has filed a resolution consenting to service upon the insurance commissioner, such consent includes the summons on an indictment for an infraction of the criminal law.¹²⁰ And a court of equity may enjoin the creation of a public nuisance resulting from the want of charter power in a foreign corporation to do the acts complained of.¹²¹

§ 281. Withdrawal of authority to receive service.

May a foreign corporation avoid suit in the courts of a State by withdrawing its agents and ceasing to do business in the State? This is a question of some difficulty, which cannot be answered without making certain discriminations.

First, if the foreign corporation has not been required to designate a particular agent to receive service of process, but can be sued, if at all, only under a statute providing for suit against a foreign corporation by service of process upon agents of a certain sort, since implied consent to be sued under such a statute is derived from doing business in the State, the cor-

N. Y. S. 383, 51 N. Y. St. Rep. 84; *Knight v. West Jersey R. R.*, 108 Pa. 250, 56 A. R. 200; *Humphreys v. Newport News & M. V. Co.*, 33 W. Va. 135, 10 S. E. 39; *Bowden v. Imperial M. & T. I. Co.*, 2 N. S. W. St. Rep. (Law) 257. "At least when the officers and most of the stockholders reside within the State." *Peters v. Neely*, 16 Lea, 275.

¹¹⁸ *Central R. R. & B. Co. v. Carr*, 76 Ala. 388, 52 A. R. 339; *Bawknight v. Liverpool & L. & G. I. Co.*, 55 Ga. 194.

¹¹⁹ *American Cas. Ins. Co. v. Lea*, 56 Ark. 539, 20 S. W. 416.

¹²⁰ *Ætna Ins. Co. v. Com.*, 21 Ky. L. Rep. 503, 51 S. W. 624.

¹²¹ *Seattle Gas & Electric Co. v. Citizens' Light & Power Co.*, 123 Fed. 588.

poration no longer gives consent when it ceases to do business in the State. In such a case, therefore, the foreign corporation cannot be sued after it has ceased to do business in the State.¹²² If the company has not ceased all business in the State, but is winding up its affairs, it may still be served under the general law.¹²³

Where the service of process is under this law, it may be avoided by ceasing to have an agent in the State who would come within the class of persons on whom, according to the statute, process might be served.¹²⁴ But process may be served on an agent no longer actually engaged in the business, if there has not been a final settlement and discharge of the agency.¹²⁵ And if the statute provides for service on the agent through whom the contract was made so long as he is an inhabitant of the State, service on such person after he has ceased to be an agent is valid,¹²⁶ the company not, so far as appears, having ceased to do business.

If the authority of the agent is fraudulently revoked, just before suit, for the purpose of avoiding service, there is authority for saying that the revocation is not effectual for the purpose.¹²⁷ So where a foreign corporation appeared in a suit, and then, all its agents having withdrawn, it came to be in contempt, it was held that the corporation could be brought before the court by process served on its attorney.¹²⁸

Second, if the corporation has designated an agent under a

¹²² *Conley v. Mathieson Alkali Works*, 190 U. S. 406, 47 L. ed. 1113; *Geer v. Mathieson Alkali Works*, 190 U. S. 428, 47 L. ed. 1122; *Cady v. Associated Colonies*, 119 Fed. 420; *Thum v. Pyke*, 6 Ida. 359, 66 Pac. 157; *Baker v. Walker S. & B.*, 18 New So. Wales W. N. 282.

¹²³ *National Bank of Augusta v. Southern P. M. Co.*, 55 Ga. 36; *Tharsis S. & C. Co. v. Soc. des Métaux*, 58 L. J. Q. B. 435.

¹²⁴ *Winney v. Sandwich Mfg. Co.*, (Ia.) 50 N. W. 565.

¹²⁵ *Gross v. Nichols*, 72 Ia. 239, 33 N. W. 653; *Brunson v. Nichols*, 72 Ia. 763, 34 N. W. 289.

¹²⁶ *Gillespie v. Commercial M. I. Co.*, 12 Gray (Mass.), 201, 71 A. D. 743.

¹²⁷ *Michael v. Mutual Ins. Co.*, 10 La. Ann. 737. *Contra*, *Sturgis v. Crescent J. M. Co.*, 57 Hun, 587, 10 N. Y. S. 470.

¹²⁸ *Eureka Lake Co. v. Yuba County*, 116 U. S. 410, 29 L. ed. 671.

statute which expressly or by interpretation confined the authority of the agent to the time during which the corporation was doing business in the State, the corporation could not be sued after it had ceased to do business; since by the very terms of the statute the consent to jurisdiction had expired.¹²⁹

Third, if, as is generally the case, the statute expressly or by clear implication provides that the authority of the designated agent cannot be withdrawn so long as any liability undertaken within the State remains unfulfilled, the corporation by designating an agent and doing business in the State accepts the terms of the statute, and cannot avoid suit by withdrawing the authority of the agent.¹³⁰

Fourth, as to a liability which accrued outside the State no suit can be brought against a foreign corporation after it has ceased to do business in the State.¹³¹

Fifth, if the corporation has designated an agent under a statute which is silent as to the time during which the authority of the agent shall last, it is doubtful whether the corporation by withdrawing the authority of the agent could prevent suit on contracts made within the State. If the statute names its own agent, it could probably defeat service of process by ceasing to have an agent within the State.¹³² But if the statute requires the designation of a State official, so

¹²⁹ *Friedman v. Empire L. I. Co.*, 101 Fed. 535; *Swann v. Mutual R. F. L. Assoc.*, 100 Fed. 922; *Guthrie v. Connecticut Indemnity Assoc.*, 101 Tenn. 643, 49 S. W. 829.

¹³⁰ *Mutual R. F. L. Assoc. v. Phelps*, 190 U. S. 147, 47 L. ed. 987; *Youmans v. Minnesota T. I. & T. Co.*, 67 Fed. 282; *McCord Lumber Co. v. Doyle*, 97 Fed. 22; *Collier v. Mutual R. F. L. Assoc.*, 119 Fed. 617; *Davis v. Kansas & T. C. Co.*, 129 Fed. 149; *Green v. Equitable M. L. & I. Assoc.*, 105 Ia. 628, 75 N. W. 635; *Home Benefit Soc. v. Muehl*, 22 Ky. L. Rep. 1378, 59 S. W. 520; *Gibson v. Manufacturers' F. & M. I. Co.*, 144 Mass. 81, 10 N. E. 729; *Magoffin v. Mutual R. F. L. Assoc.*, 87 Minn. 260, 91 N. W. 1115, 94 A. S. R. 699; *Johnston v. Mutual R. F. L. Ins. Co.*, 87 N. Y. S. 438.

¹³¹ *Mutual R. F. L. Assoc. v. Boyer*, 62 Kan. 31, 61 Pac. 387, 50 L. R. A. 538.

¹³² *Forrest v. Pittsburgh Bridge Co.*, 116 Fed. 357.

that the corporation cannot put an end to his representative character, it would seem that the authority cannot be withdrawn by the corporation. Such appears to be the opinion of the Supreme Court of the United States. "Many of those statutes simply provided that the foreign corporation should name some person or persons upon whom service of process could be made. The insufficiency of such provisions is evident, for the death or removal of the agent from the state leaves the corporation without any person upon whom process can be served. In order to remedy this defect some states, Kentucky among the number, have passed statutes, like the one before us, providing that the corporation shall consent that service may be made upon a permanent official of the state, so that the death, removal, or change of officer will not put the corporation beyond the reach of the process of the courts. It would obviously thwart this purpose if this association, having made, as the testimony shows it had made, a multitude of contracts with citizens of Kentucky, should be enabled, by simply withdrawing the authority it had given to the insurance commissioner, to compel all these parties to seek the courts of New York for the enforcement of their claims."¹³³

§ 282. Appearance in the suit.

If a corporation appears generally in a suit it is like an individual bound by the judgment, for the appearance confers jurisdiction¹³⁴ and appearance by agent designated to receive

¹³³ Brewer, J., in *Mutual R. F. L. Assoc. v. Phelps*, 190 U. S. 147, 47 L. ed. 987.

¹³⁴ *Moffitt v. Chicago Chronicle Co.*, 107 Iowa, 407, 78 N. W. 45; *North Mo. R. R. v. Akers*, 4 Kan. 453, 96 A. D. 183; *Fairfax Forest Min. & Mfg. Co. v. Chambers*, 75 Md. 604, 23 Atl. 1024; *Wineburgh v. U. S. Steam & St. Ry. Adv'ng Co.*, 173 Mass. 60, 53 N. E. 145, 73 A. S. R. 261; *New Orleans J. & G. N. R. R. v. Wallace*, 50 Miss. 244; *Albert v. Clarendon Land Inv. & Agency Co.*, 53 N. J. Eq. 623; 23 Atl. 8; *McCormick v. Pennsylvania C. R. R.*, 49 N. Y. 303; *Shields v. Union Cent. Life Ins. Co.*, 119 N. C. 380, 25 S. E. 951 (*semble*); *Congar v. Galena & C. U. R. R.*, 17 Wis. 477. As to what will constitute an appearance, see *Wood v. Furtick*, 17 Misc. 561, 40 N. Y. S. 687; *Atchison, T. & S. F. Ry. v. Forbis*, (Tex. Civ. App.) 79 S. W. 1074.

process is enough.¹³⁵ But special appearance to object to the jurisdiction does not bind the defendant;¹³⁶ even though the defendant has had the cause removed to the Federal court.¹³⁷ If the corporation appears, the court has jurisdiction to order discovery and an accounting though its office, books, and assets are outside the State.¹³⁸ The corporation is bound if it appears generally though it did so unintentionally through mistake.¹³⁹

The distinction between appearance in the suit and acceptance of service of process must be noted. Appearance is made by the authorized attorney of the corporation. Acceptance of service is merely a waiver of the formalities of service of process, and such formalities, it would seem, can be waived only by an agent authorized to receive service. If, therefore, an attorney (not being an agent on whom process may be served) "accepts service" his act is either altogether null or else it amounts to an appearance for the corporation; and in such case, therefore, the corporation cannot be defaulted for non-appearance.¹⁴⁰

§ 283. Jurisdiction in rem.

Though a State has no power over a foreign corporation, it nevertheless has complete jurisdiction over the property of the corporation within its borders. Irrespective, therefore, of whether the corporation has done business within the State or has consented to be sued in its courts, the courts of the

¹³⁵ *Alliance Assur. Co. v. Bartlett*, 9 New Mex. 554, 58 Pac. 351; *Dittenhoefer v. Coeur d'Alene Cloth. Co.*, 4 Wash. 519, 30 Pac. 660.

¹³⁶ *Elgin Canning Co. v. Atchison, T. & S. F. R. R.*, 24 Fed. 866; *Farmer v. Nat. Life Ass.*, 50 Fed. 829; *De Castro v. Compagnie Francaise*, 76 Fed. 425; *Bank v. Burch*, 76 Mich. 608, 43 N. W. 453. But see *contra*, *St. Louis, A. & T. Ry. v. Whitley*, 77 Tex. 126, 13 S. W. 853; *Mexican Cen. Ry. Co. v. Charman* (Tex. Civ. App.), 24 S. W. 958.

¹³⁷ *Farmer v. Nat. Life Ass.*, 50 Fed. 829.

¹³⁸ *Clark v. Equitable L. A. Soc.*, 76 Miss. 22, 23 So. 453.

¹³⁹ *People v. American L. & T. Co.*, 62 Hun, 622, 17 N. Y. S. 76.

¹⁴⁰ *Northern Cent. Ry. v. Rider*, 45 Md. 24; but see *Wilson v. Martin-Wilson A. F. A. Co.*, 149 Mass. 24, 20 N. E. 318.

State may proceed *in rem* against any tangible property situated in the State.¹⁴¹ Thus, one may enforce a mechanic's lien upon property within the State, though it belong to a foreign corporation which has never done business there;¹⁴² or remove a cloud on the title of land, the cloud consisting of a claim by a foreign corporation.¹⁴³

The question whether there is property of the corporation within the State is sometimes a difficult one. If the property is tangible, whether it is real or personal, the State in which it is actually situated has jurisdiction over it. If the corporation has been defrauded of tangible property which the defrauding party holds within the State, it may be reached by one who has a right to do so (for instance, a minority stockholder) though the foreign corporation cannot be served; it is property of the corporation within the State for this purpose.¹⁴⁴ But incorporeal rights cannot ordinarily be reached in that way.¹⁴⁵ How far a debt may be reached by process of garnishment will be discussed later.

On this ground are to be justified suits against a foreign corporation which has not done business within the State, begun by attachment of property of the corporation within the State, the corporation being served by publication.¹⁴⁶ Statutes commonly permit such suits.¹⁴⁷ The jurisdiction is *quasi in rem*, and the judgment is valid so far as it affects the disposition of the property under attachment and no further.¹⁴⁸

¹⁴¹ *Peo. Nat. Bank of Shelbyville v. Cleveland*, 117 Ga. 908, 44 S. E. 20; *Hodgson v. So. Bldg. & Loan Ass.*, 91 Md. 439, 46 Atl. 971; *Strom v. Mont. Cent. Ry. Co.*, 81 Minn. 346, 84 N. W. 46; *Miller v. Jones*, 67 Hun, 281, 22 N. Y. 886; *Chitty v. Pa. Ry.*, 62 S. C. 526, 40 S. E. 944.

¹⁴² *Dahlonga G. M. Co. v. Purdy*, 65 Ga. 496.

¹⁴³ *American B. & L. Assoc. v. Matthews*, (Tex. Civ. App.) 35 S. W. 690.

¹⁴⁴ *Kidd v. New Hampshire Traction Co.* (N. H.), 56 Atl. 465; *Miller v. Jones*, 67 Hun, 281, 22 N. Y. S. 86.

¹⁴⁵ *Non-Magnetic Watch Co. v. Association Horlogere*, 44 Fed. 6.

¹⁴⁶ *Wilson v. Danforth*, 47 Ga. 676.

¹⁴⁷ See these statutes collected in each State in Chapter VII.

¹⁴⁸ *Pennoyer v. Neff*, 95 U. S. 714, 24 L. ed. 565.

§ 284. Jurisdiction for garnishment.

A foreign corporation doing business in the State may be summoned as garnishee, whether the principal defendant is resident or non-resident, by service of process such as would give jurisdiction over it if it were the principal defendant.¹⁴⁹ But if the corporation which it is attempted to make garnishee is not doing business in the State it cannot be held as such, and service upon it will not bring a non-resident principal defendant within the jurisdiction of the court even to the extent of the claim attempted to be reached.¹⁵⁰ If a corporation is improperly served it cannot be held as garnishee even if it submits to the jurisdiction by a general appearance, since it is not in the power of the debtor to bring within the jurisdiction of the court a debt not otherwise within it.¹⁵¹

In order to have jurisdiction over the debt garnisheed, it would seem on principle that the court should have power to discharge the debt. This power could come from the fact that the debt is payable within the State, since the State in which a debt is payable has control over the time and manner of payment. It could also come from having power over the creditor, since it could then compel the creditor to release the claim. But on principle a garnishment should be valid, in a case where a non-resident principal debtor is not per-

¹⁴⁹ *Rainey v. Maas*, 51 Fed. 580; *Selma R. & D. R. R. v. Tyson*, 48 Ga. 351; *Cathcart v. Cincinnati, H. & D. Ry.*, 108 Ga. 253, 33 S. E. 875; *Hannibal & S. J. R. R. v. Crane*, 102 Ill. 249, 40 A. R. 581; *Greaves v. Posner*, 111 Ia. 651, 82 N. W. 1022; *National Bank of Commerce v. Huntington*, 129 Mass. 444; *Shafer Iron Co. v. Iron Circuit Judge*, 88 Mich. 464, 50 N. W. 389; *McAllister v. Pennsylvania Ins. Co.*, 28 Mo. 214; *India Rubber Co. v. Katz*, 65 App. Div. 349, 72 N. Y. S. 658; *Pennsylvania R. R. v. Peoples*, 31 Oh. S. 537; *Kennedy v. Agricultural Ins. Co.*, 165 Pa. 179, 30 Atl. 724; *Moshassuck Felt Mill v. Blanding*, 17 R. I. 297, 21 Atl. 538; *Weed S. M. Co. v. Bontelle*, 56 Vt. 570; *Dittenhoefer v. Cœur d'Alene Clothing Co.*, 4 Wash. 519, 30 Pac. 660; *Brauser v. New England F. Ins. Co.*, 21 Wis. 506. *Contra*, *Brisco v. Minah C. M. Co.*, 82 Fed. 952.

¹⁵⁰ *Associated Press v. United Press*, 104 Ga. 51, 29 S. E. 869; *Sheehan v. Frederick*, 2 York Leg. Rec. (Pa.) 10.

¹⁵¹ *Louisville & N. R. R. v. Steiner*, 128 Ala. 353, 30 So. 741; *Cromwell v. Royal C. I. Co.*, 49 Md. 366, 33 A. R. 258; *Gates v. Tusten*, 89 Mo. 13.

sonally served, only if it was payable within the jurisdiction. A claim payable within the State can always be garnisheed by service on the garnishee.¹⁵² In a few cases it has been held in accordance with what has just been said to be the correct principle, that a claim of a non-resident creditor not served personally cannot otherwise be reached.¹⁵³ But the prevailing and well-established view now is, that if the garnishee can be legally served the claim may be validly garnisheed,¹⁵⁴ even if it is a foreign judgment in favor of a non-resident.¹⁵⁵

§ 285. Who may sue a foreign corporation.

At common law, since the courts of a State are open to all persons,¹⁵⁶ a foreign corporation might be sued by an alien as well as by a citizen.¹⁵⁷ But several States, following New York, have limited the right to sue foreign corporations to citizens, unless the cause of action arose in the State, in which case aliens may sue;¹⁵⁸ and a foreign corporation, being an

¹⁵² *Fontana v. Chronicle Tel. Co.*, 83 Fed. 824; *Debs v. Dalton*, 7 Ind. App. 84, 34 N. E. 236 (*semble*); *India Rubber Co. v. Katz*, 65 App. Div. 349, 72 N. Y. S. 658.

¹⁵³ *Reimers v. Seatco M. Co.*, 70 Fed. 573, 30 L. R. A. 364; *Louisville & N. R. R. v. Steiner*, 128 Ala. 353, 30 So. 741; *Wheat v. Platte City & F. D. R. R.*, 4 Kan. 370; *Wright v. Chicago, B. & Q. R. R.*, 19 Neb. 175, 27 N. W. 90, 56 A. R. 747; *Willet v. Equitable Ins. Co.*, 10 Abb. Pr. (N. Y.) 193.

¹⁵⁴ *Chicago, R. I. & P. Ry. v. Sturm*, 174 U. S. 710, 43 L. ed. 1144; *Hannibal & S. J. R. R. v. Crane*, 102 Ill. 249, 40 A. R. 581; *Mooney v. Union Pac. R. R.*, 60 Ia. 346; *Burlington & M. R. R. v. Thompson*, 31 Kan. 180, 47 A. R. 497; *Neufelder v. German-American Ins. Co.*, 6 Wash. 336, 33 Pac. 870, 36 A. S. R. 166, 22 L. R. A. 287.

¹⁵⁵ *Fithian v. New York & E. R. R.*, 31 Pa. 114; *Jones v. New York & E. R. R.*, 1 Grant (Pa.), 457; but see *Opdyke v. Murphy Iron Works*, 10 Pa. Dist. R. 68.

¹⁵⁶ *Ante*, § 242; for the exceptional doctrine closing them to aliens in certain cases, see § 243.

¹⁵⁷ *Barrow S. S. Co. v. Kane*, 170 U. S. 100, 42 L. ed. 964; *Youmans v. Minnesota T. I. & T. Co.*, 67 Fed. 282; *Johnston v. Trade Ins. Co.*, 132 Mass. 432; *Mutual L. I. Co. v. Nichols*, (Tex. Civ. App.) 24 S. W. 910; *Western U. T. Co. v. Shaw*, (Tex. Civ. App.) 77 S. W. 433.

¹⁵⁸ *Cromwell v. Royal C. I. Co.*, 49 Md. 366, 33 A. R. 258; *Emerson T. & Co. v. McCormick H. M. Co.*, 51 Mich. 5, 16 N. W. 182; *Railway Co. v. Hosmer*, 106 Mich. 248, 64 N. W. 17; *Palmer v. Phoenix M. L. I. Co.*, 84 N.

alien though doing business in the State, can sue another only on the same condition.¹⁵⁹ If the cause of action arose within the State, a foreign individual or corporation may sue a foreign corporation.¹⁶⁰

A non-resident administrator of a deceased person is an alien,¹⁶¹ and conversely a resident executor of a non-resident testator may sue.¹⁶²

A cause of action in contract arises within the State not because the contract is made within the State, but when it is performable in the State and is therefore broken there.¹⁶³

The statute limits the jurisdiction of the courts, and it is therefore impossible to maintain the action, though the defendant corporation appears and consents to the suit.¹⁶⁴

Y. 63; Robinson v. Oceanic S. N. Co., 112 N. Y. 315, 19 N. E. 625; Smith v. Union Milk Co., 70 Hun, 348, 24 N. Y. S. 79; Weston v. Boston W. C. Co., 75 Hun, 115, 26 N. Y. S. 1101; Robeson v. Central R. R., 76 Hun, 444, 28 N. Y. S. 104; Selser Bros. Co. v. Potter Produce Co., 80 Hun, 554, 30 N. Y. S. 294; Ladenburg v. Commercial Bank, 87 Hun, 269, 33 N. Y. S. 821; O'Brien v. Peoria Water Co., 5 App. Div. 229, 39 N. Y. S. 121; Delaware, L. & W. R. R. v. New York, S. & W. R. R., 12 Misc. 230, 33 N. Y. S. 1081; Progressive Power Co. v. Wrought I. B. Co., 14 Misc. 23, 35 N. Y. S. 130; Monda v. Wells, Fargo & Co., 20 Misc. 685, 21 Misc. 308, 46 N. Y. S. 682, 47 N. Y. S. 182; Bryan v. Western U. T. Co., 133 N. C. 603, 45 S. E. 938; Central R. R. & B. Co. v. Georgia C. & I. Co., 32 S. C. 319, 11 S. E. 192; Sawyer v. North A. L. I. Co., 46 Vt. 697. The statutes are collected in Chapter VII. See also § 243.

¹⁵⁹ Emerson T. & Co. v. McCormick H. M. Co., *supra*; Central R. R. & B. Co. v. Georgia, C. & I. Co., *supra*.

¹⁶⁰ Emerson T. & Co. v. McCormick H. M. Co., *supra*; Strawn v. Brandt Dent Co., 71 App. Div. 234, 75 N. Y. S. 698; Munger V. T. Co. v. Rubber G. M. Co., 81 N. Y. S. 302; Bryan v. Western U. T. Co., *supra*; Osborne v. Shawmut Ins. Co., 51 Vt. 278.

¹⁶¹ Robinson v. Oceanic S. N. Co., 112 N. Y. 315, 19 N. E. 625.

¹⁶² Palmer v. Phoenix M. L. I. Co., 84 N. Y. 63.

¹⁶³ Maxwell v. Atchison, T. & S. F. R. R., 34 Fed. 286; Hibernia Nat. Bank v. Lacombe, 84 N. Y. 367, 38 A. R. 518; but see Perry v. Erie Transfer Co., 4 Misc. 598, 23 N. Y. S. 878.

¹⁶⁴ Robinson v. Oceanic S. N. Co., 112 N. Y. 315, 19 N. E. 625; Selser Bros. Co. v. Potter Produce Co., 80 Hun, 554, 30 N. Y. S. 294; but see Smith v. Union Milk Co., 70 Hun, 348, 24 N. Y. S. 79.

These statutes limiting the right to sue a foreign corporation are constitutional.¹⁶⁵

A foreign corporation is exempt from supplementary proceedings in New York if it is doing business therein;¹⁶⁶ and it remains so exempt even after the appointment of a receiver.¹⁶⁷

The State laws limiting the jurisdiction in suits against foreign corporations do not affect the jurisdiction of the Federal courts. In a suit between a corporation and a foreigner or citizen of another State the Federal courts have jurisdiction by the Constitution, and venue can be had wherever the corporation can be found.¹⁶⁸ Therefore a foreign corporation may be sued by a foreigner, or by a citizen or corporation of another State, in any district where it is found doing business, although the courts of the State do not permit the suit.¹⁶⁹ The jurisdiction of the Circuit Courts of the United States is not created by, and does not depend upon, the statutes of the several States.¹⁷⁰

§ 286. Statute of limitations.

If a foreign corporation has been doing business within a State, and has in consequence been liable to service of process, it may plead the statute of limitations.¹⁷¹ Conversely, if a corporation has not had an agent within the State on whom process could be served it could not plead the statute;¹⁷² and

¹⁶⁵ Robinson v. Oceanic S. N. Co., *supra*.

¹⁶⁶ Viator v. Richards Co., 20 Misc. 289, 45 N. Y. S. 800.

¹⁶⁷ Viator v. Richards Co., 20 Misc. 289, 45 N. Y. S. 800.

¹⁶⁸ *Ante*, § 75.

¹⁶⁹ Barrow S. S. Co. v. Kane, 170 U. S. 100, 42 L. ed. 964; Hayden v. Androscoggin Mills, 1 Fed. 93; Merchants Mfg. Co. v. Grand Trunk Ry., 63 How. Pr. (N. Y.) 459.

¹⁷⁰ Gray, J., in Barrow S. S. Co. v. Kane, *supra*.

¹⁷¹ Southern Ry. Co. v. Mayes, 113 Fed. 84; King v. National M. & E. Co., 4 Mont. 1, 1 Pac. 727; Turcott v. Yazoo & M. V. R. R., 101 Tenn. 102, 45 S. W. 1067; but see *contra* (*semble*), Larson v. Aultman & Taylor Co., 86 Wis. 281, 56 N. W. 915, 39 A. S. R. 893, depending on the peculiar wording of the Wisconsin statutes

¹⁷² Williams v. Iron Belt Bldg. & Loan Ass., 131 N. C. 267, 42 S. E. 607.

so if it fails to comply with the statute and appoints an agent to receive service of process.¹⁷³ In New York, however, it is generally held a foreign corporation may not plead the statute of limitations.¹⁷⁴ The subject has been fully discussed elsewhere.¹⁷⁵

¹⁷³ *Johnson & L. D. G. Co. v. Cornell*, 4 Okla. 412, 46 Pac. 860.

¹⁷⁴ *Robeson v. Cent. R. R. of N. J.*, 76 Hun, 444, 28 N. Y. S. 104.

¹⁷⁵ *Ante*, § 76.

CHAPTER XII

PROCEDURE IN SUITS AGAINST CORPORATIONS.

§ 291. Allegations in the plaintiff's pleadings.	§ 294. Return of service of process.
292. Allegations in affidavit for attachment.	295. Venue.
293. Allegations in the defendant's pleadings.	296. Conduct of the suit.
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§ 291. Allegations in the plaintiff's pleadings.

The declaration should state that the defendant is a foreign corporation,¹ and that it is doing business in the State;² but it is not necessary to allege that it has complied with the statute and obtained permission to do business,³ nor in what State it was incorporated.⁴

Where, as under the New York practice, a foreign corporation can be sued only by a resident or on a cause of action arising within the State it is not necessary in the plaintiff's complaint to allege his own residence, or that the cause of action arose within the State; if nothing appears in the complaint to show that the case is one in which the court has no jurisdiction, the complaint is good.⁵ If, however, the plain-

¹ *Continental Ins. Co. v. Mansfield*, 45 Miss. 311.

² *St. Clair v. Cox*, 106 U. S. 350, 27 L. ed. 222.

³ *Home F. B. Order v. Jones*, (Tex. Civ. App.) 48 S. W. 219.

⁴ *Machen v. Western U. T. Co.*, 63 S. C. 363, 41 S. E. 448.

⁵ *Gurney v. Grand Trunk Ry.*, 59 Hun, 625, 13 N. Y. S. 645; *Brown v. Travelers L. & A. I. Co.*, 21 App. Div. 42, 47 N. Y. S. 253; *Herbert v. Montana Diamond Co.*, 81 App. Div. 212, 80 N. Y. S. 717; *Sims v. Bonner*, 16 N. Y. S. 801, 42 N. Y. St. Rep. 14; *Hand v. Society for Savings*, 18 N. Y. S. 157, 19 N. Y. S. 910; *Campbell v. Texas C. R. R.*, 15 Misc. 442, 37 N. Y. S. 213.

A few cases *contra* do not seem to represent the law; though they were cases arising on a motion to serve summons by publication, where on account of the wording of the statute a different rule may prevail. *Bogert v. Otto G. E. Works*, 28 App. Div. 463, 51 N. Y. S. 118; *Foster v. Electric*

tiff appears on the complaint to be a foreign corporation, it has been held that the complaint should allege that the cause of action arose in the State.⁶

§ 292. Allegations in affidavit for attachment.

An affidavit on which to found an attachment must, it would seem, show not only the cause of action but all things necessary to confer the right of attachment; and consequently, in New York, it must show either the residence of the plaintiff or the origination of the cause of action within the State.⁷ And on a motion and affidavit for service of summons by publication, the necessary jurisdictional facts must also appear in the affidavit.⁸ And in New York, where summons by publication is issued on a verified complaint, it seems that for this purpose the complaint must contain the necessary jurisdictional allegations.⁹ It must also be alleged for this purpose that the defendant is a foreign corporation.¹⁰

§ 293. Allegations in the defendant's pleadings.

The fact that a defendant corporation has not filed its articles, appointed an agent to receive service of process, or otherwise complied with law does not bar it from making a

H. R. Co., 16 Misc. 147, 37 N. Y. S. 1063. If an allegation were necessary, it could be supplied by amendment at the trial. *Voshefskey v. Hillside C. & I. Co.*, 21 App. Div. 168, 47 N. Y. S. 386.

⁶ *Selser Bros. Co. v. Potter Produce Co.*, 80 Hun, 554, 30 N. Y. S. 294.

⁷ *Oliver v. Walter H. C. M. Co.*, 57 Hun, 588, 10 N. Y. S. 711; *Ladenburg v. Commercial Bank*, 87 Hun, 269, 33 N. Y. S. 821; *Coolidge v. American Realty Co.*, 92 App. Div. 622, 86 N. Y. S. 318. But see *Bradley v. Interstate L. & C. Co.*, 12 S. D. 28, 80 N. W. 141. The distinction between the necessary allegations in the complaint and in the affidavit is well recognized. In *Ladenburg v. Commercial Bank*, *supra*, the language used was broad enough to cover the allegations in the complaint; but in *Brown v. Travelers L. & A. I. Co.*, 21 App. Div. 42, 47 N. Y. S. 253, it was said that the case is "not an authority on the question of pleading."

⁸ *Victor M. & M. Co. v. Justice Court*, 18 Nev. 21, 1 Pac. 831.

⁹ *Bogert v. Otto G. E. Works*, 28 App. Div. 463, 51 N. Y. S. 118; *Foster v. Electric H. R. Co.*, 16 Misc. 147, 37 N. Y. S. 1063.

¹⁰ *Shanks v. Magnolia Metal Co.*, 89 Hun, 486, 35 N. Y. S. 385; *Randolph v. Susquehanna W. P. & P. Co.*, 12 App. Div. 479, 42 N. Y. S. 411.

defence when sued.¹¹ The defendant must set up any defence based on its own or the plaintiff's status by a plea; thus the fact that it is not a foreign corporation must be pleaded,¹² and so must the facts that the plaintiff is a non-resident and the cause of action arose outside the State.¹³ It cannot be done by demurrer¹⁴ or by motion to dismiss.¹⁵ So, if the service was not on an agent authorized to receive it, or the corporation was not doing business in the State, the fact must be set up in defense by a plea to the jurisdiction;¹⁶ a writ of prohibition will not lie.¹⁷

§ 294. Return of service of process.

The return of service must show on its face that it has been properly served on a person authorized to receive service of process;¹⁸ it is not enough that it recites service on "one of the agents" of the corporation.¹⁹ The name of the agent served and the nature of his agency should be named, in order that the court may judge whether the service has been a proper one.²⁰ The citation need not contain the name of the agent to be served,²¹ though it would be well to insert the name.²²

¹¹ *Weeks v. Garibaldi S. G. M. Co.*, 73 Cal. 599.

¹² *McAllister v. Pennsylvania Ins. Co.*, 28 Mo. 214; *De Maio v. Standard Oil Co.*, 68 App. Div. 167, 74 N. Y. S. 165; *Steele v. R. M. Gilmour Mfg. Co.*, 77 App. Div. 199, 78 N. Y. S. 1078.

¹³ *Universal L. I. Co. v. Bachus*, 51 Md. 28; *Maxwell v. Speed*, 60 Mich. 36, 26 N. W. 824; *Gurney v. Grand Trunk Ry.*, 59 Hun, 625, 13 N. Y. S. 645.

¹⁴ *Universal L. I. Co. v. Bachus*, *supra*; *Gurney v. Grand Trunk Ry.*, *supra*.

¹⁵ *Maxwell v. Speed*, *supra*; *Delaware, L. & W. R. R. v. New York, S. & W. R. R.*, 12 Misc. 230, 33 N. Y. S. 1081.

¹⁶ *Benwood Ironworks v. Hutchinson*, 101 Pa. 359.

¹⁷ *State v. District Court*, 26 Minn. 233.

¹⁸ *St. Clair v. Cox*, 106 U. S. 350, 27 L. ed. 222; *Adkins v. Globe F. I. Co.*, 45 W. Va. 384, 32 S. E. 194.

¹⁹ *Gates v. Tusten*, 89 Mo. 13 (*semble*).

²⁰ *Northern Cent. Ry. v. Rider*, 45 Md. 24; *Continental Ins. Co. v. Mansfield*, 45 Miss. 311; *Liblong v. Kansas F. I. Co.*, 82 Pa. 413.

²¹ *Railway v. Wise*, 3 Wills. Civ. App. (Tex.) 386; *Frick Co. v. Wright*, 23 Tex. Civ. App. 340, 55 S. W. 608.

²² *Continental Ins. Co. v. Mansfield*, 45 Miss. 311.

If service is allowed on one officer or agent only if another cannot be found, a return of service on the former must expressly recite that the latter could not be found.²³

If the return is insufficient, it may be amended under order of court.²⁴

§ 295. Venue.

The question of venue is one of purely local practice; the statutes regulating it have not been collected, and only the most general principles concerning it will here be stated.

The facts on which venue depends need not be stated in the plaintiff's pleading.²⁵ Where an agent has been designated to receive service of process, that agent may be served anywhere in the State, without reference to the county in which the venue is laid.²⁶

If by statute a foreign corporation is liable to suit in the county in which it does business, it can be sued in no other;²⁷ though if there is no such statute a foreign corporation, not being a resident, may be sued in any county.²⁸

§ 296. Conduct of the suit.

Though service may be made on a State official, the conduct

²³ *Southern Exp. Co. v. Hunt*, 54 Miss. 664; *Brooks v. Syndicate*, 24 Nev. 311, 53 Pac. 597; *Glines v. Supreme Sitting*, 20 N. Y. S. 275, 22 N. Y. Civ. Pro. Rep. 437; affirmed 66 Hun, 634, 21 N. Y. S. 543; *Vitolo v. Bee Publishing Co.*, 66 App. Div. 582, 73 N. Y. S. 273. See *Comet C. M. Co. v. Frost*, 15 Colo. 310, 25 Pac. 506.

²⁴ *Frick Co. v. Wright*, 23 Tex. Civ. App. 340, 55 S. W. 608.

²⁵ *Hilleary v. Skookum R. H. G. Co.*, 4 Misc. 127, 53 N. Y. St. Rep. 206, 23 N. Y. S. 1016; *Empire C. & C. Co. v. Hull C. & C. Co.*, 51 W. Va. 474, 41 S. E. 917. See, however, *Bradstreet Co. v. Gill*, 72 Tex. 115, 9 S. W. 753, 2 L. R. A. 405, 13 A. S. R. 768.

²⁶ *People v. Justices*, 11 N. Y. S. 773, 33 N. Y. St. Rep. 147; *Sattler v. Aultman & Taylor M. Co.*, 6 Pa. Dist. R. 419; *Gardner Shingle Co. v. Nicla*, 25 Pa. Co. Ct. 303.

²⁷ *Angerhoefer v. Bradstreet Co.*, 22 Fed. 305; *Sullivan v. Sullivan Timber Co.*, 103 Ala. 371, 15 So. 941, 25 L. R. A. 543; *Easley v. New Zealand Ins. Co.*, 4 Ida. 205, 38 Pac. 405; *State v. Western U. T. Co.*, 48 La. Ann. 81, 18 So. 910; *St. Louis, A. & T. Ry. v. Whitley*, 77 Tex. 126.

²⁸ *Thomas v. Placerville G. Q. M. Co.*, 65 Cal. 600.

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of the suit must be left in the hands of the corporation; and the statutes provide for notice of service to be given to the corporation. Any local agent authorized to do so may employ counsel and file an answer.²⁹ Thus an officer of the corporation may verify a pleading for a corporation,³⁰ and so may an attorney;³¹ and it need not be stated why the verification is not made by the party.³² A managing director is an officer within a statute allowing verification by officers.³³

§ 297. Presumptions and proof.

Jurisdiction must be proved, and will not be presumed; and, therefore, in a State where a non-resident cannot sue a foreign corporation on a cause of action arising in the State if no evidence is given as to the residence of the plaintiff or the place where the cause of action arose, judgment must be given for the defendant.³⁴ If evidence is introduced and leaves the question doubtful, it must be left to the jury.³⁵

But legal action must be presumed rather than illegal. It must, therefore, be presumed in the absence of evidence that a foreign corporation has complied with the law and appointed a State officer its agent to receive service.³⁶ And an agent who acted in the transaction out of which the suit arises will be presumed still to be an agent of the company for the purpose of service.³⁷

²⁹ *Dougan v. Sun Fire Office*, 39 Mo. App. 676.

³⁰ *Robinson v. Ecuador Development Co.*, 32 Misc. 106, 65 N. Y. S. 427.

³¹ *American Audit Co. v. Indus. Feder. of Am.*, 84 App. Div. 304, 82 N. Y. S. 642.

³² *Robinson v. Ecuador Devel. Co.*, 32 Misc. 106, 65 N. Y. S. 427.

³³ *Best v. Brit. & Am. Mtg. Co.*, 131 N. C. 70, 42 S. E. 456.

³⁴ *Progressive Power Co. v. Wrought-Iron Bridge Co.*, 14 Misc. 23, 35 N. Y. S. 130; *Snow-Church & Co. v. Snow-Church Surety Co.*, 80 App. Div. 40, 80 N. Y. S. 512.

³⁵ *Gundlin v. Hamburg A. P. Co.*, 8 Misc. 291, 28 N. Y. S. 572.

³⁶ *American S. & W. Co. v. Raleigh C. & C. Co.*, 10 Pa. Dist. R. 285.

³⁷ *Funk v. Anglo-American Ins. Co.*, 27 Fed. 336.

TITLE IV.
OF THE INTERNAL AFFAIRS OF A FOREIGN CORPO-
RATION.

CHAPTER XIII.

**JURISDICTION OVER THE INTERNAL AFFAIRS OF A FOREIGN
CORPORATION.**

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| <p>§ 300. Defect of jurisdiction over the internal affairs of a foreign corporation.</p> <p>301. Existence of a corporation determined by State of charter.</p> <p>302. A foreign corporation cannot be dissolved.</p> <p>303. Contracts not declared void for misuser of power.</p> <p>304. Shareholder bound by general laws of State of charter.</p> | <p>§ 305. Management regulated by State of charter.</p> <p>306. Officers.</p> <p>307. Stock and stockholders.</p> <p>308. Assessments and dividends.</p> <p>309. Proceedings for accounting.</p> <p>310. Proceedings to restrain fraudulent dealings with property.</p> <p>311. Proceedings to restrain the misuse of property.</p> <p>312. Recent tendency to take jurisdiction.</p> |
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§ 300. Defect of jurisdiction over the internal affairs of a foreign corporation.

In dealing with the internal affairs of a foreign corporation the courts may have complete jurisdiction over the parties; both the corporation itself and its officers may be subject to the jurisdiction of the courts: the lack of jurisdiction which may be claimed, therefore, is of the somewhat vague thing called jurisdiction of the subject-matter. This phrase in this connection indicates that a court which has entire power to issue orders refrains from doing so for some reason connected with the nature of the contention.

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A court may decline to act from a lack of power to enforce its decrees, or because the court of some other jurisdiction is better entitled to settle the dispute. An example of the first is the refusal of a court of equity to decree the doing of an act in a foreign country; of the latter, the refusal of a court of law to permit an action for trespass on foreign land when the title is put in issue.

In the case of a foreign corporation, both these reasons exist to prevent a regulation of its internal affairs by a foreign court. But these considerations, it will be noticed, apply only in the case of an exercise of discretionary jurisdiction; the granting of an equitable remedy or of a prerogative writ. An ordinary personal action at law will not usually involve a determination of internal affairs of a corporation; though in an exceptional case it might do so.

§ 301. Existence of a corporation determined by State of charter.

Since a corporation is such because it is chartered by the law of some State, and only so far as that State makes it a corporation, it follows that when a corporation is acting as such *de facto* in its own State the validity of its organization is to be tested by the law of the country creating it.¹ As the Supreme Court of Illinois said of a corporation chartered in Indiana, "The authority to inquire, by *quo warranto*, whether, there being a corporation *de facto*, it is in all respects a legal and valid corporation, belongs to the State of Indiana alone."² So the Supreme Court of Alabama held that it would not question the existence of a corporation created by the laws of Georgia during the civil war, its organization having been recognized by the Supreme Court of Georgia.³ And so a decision by the Supreme Court of Alabama that a corporation of that State has no power to issue additional stock is

¹ *Oregonian Co. v. Ore. Ry. & Nav. Co.*, 27 Fed. 277; *Lancaster v. Amsterdam Improvement Co.*, 140 N. Y. 576, 24 L. R. A. 322; *Grant v. Henry Clay Coal Co.*, 80 Pa. 208.

² *Hudson v. Green Hill Seminary*, 113 Ill. 618.

³ *Importing & Exporting Co. v. Locke*, 50 Ala. 332.

binding.⁴ A corporation must, therefore, be considered as still in existence until dissolved by the State of its creation. If dissolved by the *de facto* government of the country creating it, such dissolution will be recognized elsewhere.⁵

But when a corporation pleads a decree of dissolution, the court will inquire whether or not the decree was issued by competent authority. So the Supreme Court of New York refused to recognize a decree of the "supreme director" of Nicaragua, in the absence of proof that the "supreme director" had power to utter the decree.⁶ Similarly the Supreme Court of Massachusetts decided that the Supreme Court of New York was without jurisdiction in dissolving a corporation collaterally in a suit brought by a private individual.⁷

Where the same corporation has received several charters from different States, any State may declare a forfeiture of the charter granted by that State.⁸ This, of course, would not affect the charters granted by other States.

If it appears that the persons claiming to be a corporation never in fact accepted the charter, any court may declare them to be no corporation. It was so held by the Supreme Court of Maryland. Certain individuals claimed to have been incorporated under the laws of North Carolina. The court refused to recognize the corporation on proof that all the meetings of the so-called corporation had been held in Maryland.⁹ Similarly in Massachusetts persons claiming to have been incorporated under the laws of New Hampshire were held to be no corporation, it appearing that they had not complied with the requirements of the law.¹⁰

⁴ Clark v. Turner, 73 Ga. 1.

⁵ Remington v. Samana Bay Co., 140 Mass. 494, 5 N. E. 292; McLaren v. Pennington, 1 Paige (N. Y.), 102.

⁶ Lea v. Amer. A. & P. Canal Co., 3 Abb. Pr. (N. S.) (N. Y.) 1 (*semble*).

⁷ Folger v. Columbian Ins. Co., 99 Mass. 267, 96 A. D. 747.

⁸ Hart v. Boston, H. & E. R. R., 40 Conn. 524, 539.

⁹ Smith v. Silver Valley Min. Co., 64 Md. 85, 54 A. R. 760; *acc.* Duke v. Taylor, 27 Fla. 64, 19 So. 192, 31 L. R. A. 484.

¹⁰ Montgomery v. Forbes, 148 Mass. 249, 19 N. E. 342.

§ 302. A foreign corporation cannot be dissolved.

A State can never dissolve a foreign corporation or declare a forfeiture of its charter for misuser.¹¹ A receiver may be appointed and the corporation enjoined from doing business in the State,¹² so that for all practical purposes it may cease to exist within the jurisdiction; but it is not thereby dissolved. Creditors may still bring suit against it unless dissolved in the State of charter.¹³ Proceedings may, however, be brought to test the right of a foreign corporation to exercise its franchises within the State; and for this purpose *quo warranto* is the proper remedy.¹⁴ The proper judgment is an ouster, not from its franchises, but from the exercise of its franchises in the State.¹⁵

§ 303. Contracts not declared void for misuser of powers.

If a State cannot declare a forfeiture of the charter of a foreign corporation, neither can it declare its contracts void for misuser. In *Silver Lake Bank v. North*¹⁶ it is said, "Since plaintiff was duly incorporated with power to contract, if they should pass the exact line of their power, it would rather belong to the government of Pennsylvania to exact a forfeiture of their charter, than for this court in this collateral matter to decide a question of misuser, by setting aside a just and *bona fide* contract." The general proposition that a con-

¹¹ *Society for Propagation of the Gospel v. New Haven*, 8 Wheat. 464, 5 L. ed. 662; *Republican Mt. S. M. v. Brown*, 58 Fed. 644, 24 L. R. A. 776; *Merrick v. Van Santvoord*, 34 N. Y. 208; *Dodge v. Pyrolusite Mang. Co.*, 69 Ga. 665.

¹² See *post*, chap. xxxii.

¹³ *Kincaid v. Dwinelle*, 59 N. Y. 548.

¹⁴ *State v. Am. Book Co.*, 65 Kan. 847, 69 Pac. 563; *State v. Fidelity & Casualty Ins. Co.*, 39 Minn. 538; *State v. Standard Oil Co.*, 61 Neb. 28, 84 N. W. 413, 87 A. S. R. 449; *State v. Insurance Co.*, 49 Oh. St. 440, 31 N. E. 658, 34 A. S. R. 573, 16 L. R. A. 611; *State v. Boston, C. & M. Ry.*, 25 Vt. 433.

¹⁵ *State v. W. U. M. Life Ins. Co.*, 47 Oh. St. 167, 24 N. E. 392, 8 L. R. A. 129.

¹⁶ 4 Johns. Ch. (N. Y.) 370.

tract of a corporation should not be declared void for collateral misuser is undoubtedly sound.¹⁷ The Supreme Court of the United States has given a similar opinion.¹⁸ It was assumed that a bank chartered by the United States did take a deed of trust of land in a manner not authorized by charter. It was held that the security was not void. The court said: "The statute does not declare such a security void. . . . The authority of *Silver Lake Bank v. North*, if recognized as sound, is conclusive. We cannot believe it was meant that stockholders, and perhaps depositors and other creditors, should be punished and the borrower rewarded, by giving success to this defense whenever the offensive fact shall occur. The impending danger of ouster and dissolution, was, we think, the check and none other contemplated by Congress. That has been always the punishment prescribed for the wanton violation of a charter, and it may be made to follow whenever the proper public authority shall see fit to invoke its application. A private person cannot directly or indirectly usurp this function of the government."

§ 304. Shareholders bound by general laws of State of charter.

The relation of a shareholder to a corporation is more intimate than that of one who merely does business with it. It is no injustice to require of a shareholder assent to the laws of the State granting the charter and it is held that he gives such assent.¹⁹ If a State makes certain laws for the regulation of corporations, one who wishes to become a member of a corporation of that State should in justice and reason be required to acquaint himself with them.²⁰ Accordingly, a citizen of Maryland purchasing stock in a Virginia corporation was held bound to pay assessments accruing after he had

¹⁷ *Bank of Kentucky v. Schuylkill Bank*, 1 Parsons (Pa.), 226.

¹⁸ *National Bank v. Matthews*, 98 U. S. 621, 25 L. ed. 188.

¹⁹ *Nashua Sav. Bank v. Anglo-Am. Land, Mtg. & Agency Co.*, 189 U. S. 221, 47 L. ed. 782.

²⁰ *Keystone Driller Co. v. Superior Ct.*, 138 Cal. 738, 72 Pac. 398.

parted with the stock, by virtue of a Virginia statute which provided that assignment should not operate to discharge a shareholder from assessments already due or thereafter to become due.²¹ The Supreme Court of the United States decided that a shareholder was bound by the construction put on a Missouri statute by the courts of Missouri, to the effect that the creditor of a corporation might have further execution against a shareholder.²² Even if it is alleged that the corporation is being mismanaged and a citizen of the State of forum treated *mala fide* the court cannot interfere, if the acts are legal in the charter State.²³

So, where an Englishman filed his bill in England to be protected against a forfeiture of his shares in a Dutch company, it was held that the law of Holland was conclusive in the matter.²⁴

The same principle is involved where the by-laws of a corporation provide (in accordance with the laws of the incorporating State) that every foreign shareholder should choose a domicile in the incorporating State, in order that process may there be served on him in case of disputes between himself and the corporation; and if he does not choose such a domicile, that service may be made for him on a certain public officer. In such a case service made on the officer named gives the court jurisdiction over the shareholder.²⁵ And where the law of the incorporating State provides that a joint-stock company may be sued in the name of one of its officers, and a judgment in such a suit will bind a member on whom no service is made, a foreign member will be bound

²¹ *McKim v. Glenn*, 66 Md. 479, 8 Atl. 130.

²² *Allen v. Fairbanks*, 45 Fed. 445.

²³ *Republican Mt. S. M. v. Brown*, 58 Fed. 644, 24 L. R. A. 776. See *Bank of China v. Morse*, 168 N. Y. 458, 61 N. E. 774, 85 A. S. R. 676, 56 L. R. A. 139.

²⁴ *Sudlow v. Dutch Rhemish Ry.*, 21 Beav. 43. *Acc. Republican Mt. S. M. v. Brown*, 58 Fed. 644, 24 L. R. A. 776; *Mining Co. v. Field*, 64 Md. 151, 20 Atl. 1039; but see *Bank of China v. Morse*, 168 N. Y. 458, 61 N. E. 774, 55 A. S. R. 676, 56 L. R. A. 139.

²⁵ *Copin v. Adamson*, 1 Ex. Div. 17.

though he had no notice of the suit.²⁶ So the shareholders in an English company must allow it to be wound up according to the law of England;²⁷ and the validity of calls by the corporation for an unpaid installment of the subscription is determined by the same law.²⁸ Upon the same principle the liability of a stockholder to creditors depends upon the law of the State of charter.²⁹ And so, too, priority given to a lien by the laws of the State of domicile cannot be contested by a shareholder.³⁰

Where a citizen of Alabama becomes a member of a building and loan association of Minnesota, her membership fee, and an attorney's fee provided for foreclosure of mortgage is collectible;³¹ and so a member of an English company will be bound by the posting of a notice of calls and the forwarding of a printed notice, when the articles of association provide that notice for a non-resident shareholder who neglected to give his address shall be posted in an office which will be deemed his registered place of abode.³²

§ 305. Management regulated by State of charter.

As a general rule, the internal management of a foreign corporation will not be interfered with on petition of a share-

²⁶ *Bank of Australasia v. Harding*, 19 L. J. C. P. 345; *Bank of Australasia v. Nias*, 16 Q. B. 717, 20 L. J. Q. B. 284; *Kelsall v. Marshall*, 26 L. J. C. P. 19; *Tompkins v. Blakey*, 70 N. H. 584, 49 Atl. 111.

²⁷ *Republican Mt. S. M. v. Brown*, 58 Fed. 644, 24 L. R. A. 776; *Bank of China v. Morse*, 168 N. Y. 458, 61 N. E. 774, 85 A. S. R. 676, 56 L. R. A. 139; to the same effect *Bank Commrs. v. Granite St. Prov. Ass.*, 70 N. H. 557, 49 Atl. 124, 85 A. S. R. 646.

²⁸ *Nashua Savings Bank v. Anglo-Am. Land, Mtg. & Agency Co.*, 189 U. S. 221, 47 L. ed. 782; *Amer. Pastoral Co. v. Gurney*, 61 Fed. 41; *Langworthy v. Garding*, 74 Minn. 325, 77 N. W. 208; but see *Bank of China v. Morse*, 168 N. Y. 458, 61 N. E. 774, 85 A. S. R. 676, 56 L. R. A. 139.

²⁹ *Post*, Ch. XVII.

³⁰ *Hudson River Pulp & Paper Co. v. H. H. Warner & Co.*, 99 Fed. 187.

³¹ *Falls v. U. S. Sav. & Loan & Bldg. Co.*, 97 Ala. 417, 13 So. 25, 38 A. S. R. 194, 24 L. R. A. 174.

³² *Nashua Savings Bank v. Anglo-Am. Land, Mtg. & Agency Co.*, 189 U. S. 221, 47 L. ed. 782.

holder.³³ The stockholder must apply to the courts of the State of charter. Thus the court of a foreign State will not enjoin the action of the officers of a corporation,³⁴ as for instance adopting, without authority as it is alleged, a new plan of insurance.³⁵ Nor will the foreign court appoint a receiver for a solvent foreign corporation at the suit of a stockholder who claims mismanagement and wasting the assets;³⁶ nor on the other hand will it compel a distribution of the assets among the stockholders.³⁷ Nor will it interfere to prevent the trustees from applying to the legislature of the charter State for an extension of powers.³⁸

But while this is the principle upon which courts ordinarily act, there is no lack of jurisdiction in a court of equity to restrain the acts of any corporation on which its process may be served; and in an exceptional case a court of equity may exercise its power over a foreign corporation. Thus the English Court of Chancery did in one case without much considering the point restrain the resident directors of a Turkish corporation from using the funds for the prosecution of a libel suit against an officer of the company.³⁹

§ 306. Officers.

The court will not interfere in any way with the election

³³ *Leary v. Colo. River & P. S. Nav. Co.*, 82 Fed. 775; *Sidway v. Mo. Land &c. Co.*, 101 Fed. 481; *Stockley v. Thomas*, 89 Md. 663, 43 Atl. 766; *State v. N. Amer. Land & Timber Co.*, 106 La. 621, 31 So. 172, 87 A. S. R. 309; *Redmond v. Enfield Mfg. Co.*, 13 Abb. Pr. (N. S.) (N. Y.) 332; *Madden v. Penn. El. L. Co.*, 199 Pa. 454, 49 Atl. 296.

³⁴ *Wilkins v. Thorne*, 60 Md. 253; *Hallenborg v. Greene*, 73 N. Y. S. 403, 66 App. Div. 590.

³⁵ *Taylor v. Mut. Res. Fund Life Ass.*, 97 Va. 60, 33 S. E. 385, 45 L. R. A. 621.

³⁶ *Leary v. Colo. Riv. & P. S. Nav. Co.*, 82 Fed. 775; *Sidway v. Mo. Land &c. Co.*, 101 Fed. 481; but see *Harding v. Amer. Glucose Co.*, 182 Ill. 551, 55 N. E. 577, 74 A. S. R. 189.

³⁷ *Leary v. Colo. Riv. & P. S. Nav. Co.*, 82 Fed. 775; *Redmond v. Enfield Mfg. Co.*, 13 Abb. Pr. (N. S.) (N. Y.) 332; *American T. N. C. Co. v. Schuler*, (Tex. Civ. App.) 79 S. W. 370.

³⁸ *Bill v. Sierra Nevada L. W. & M. Co.*, 1 DeG. F. & J. 177.

³⁹ *Pickering v. Stephenson*, L. R. 14 Eq. 322.

of officers in a foreign corporation.⁴⁰ Thus in a case where a writ of *quo warranto* was asked for, in order to inquire into the regularity of the election of officers in a foreign corporation, the court gave as a reason for refusing the writ that the courts of the State of charter, "of whose jurisdiction there is no doubt, might give a contrary decision, and thus produce serious conflict."⁴¹ On this ground a decision seems questionable in which a writ of *quo warranto* was allowed to restore to his position one who claimed the office as superintendent in a foreign corporation; the court saying that while it could not restore him to the *office* it could replace him in his agency within the State.⁴²

§ 307. Stock and stockholders.

The right to a share in a corporation must be determined by the law of the charter; as for instance whether the corporation has a lien on the stock for the debt of a former stockholder.⁴³ And a bill cannot be maintained against a foreign corporation to compel it to issue stock to one who claims to be a stockholder. "The determination of the question who shall be entitled to receive from the corporation certificates of its stock, so that they shall thereby become members of it, is one which does not alone affect the external relations of the corporation, but involves its organic laws, which are necessarily local and require local administration."⁴⁴ The court has no right "to exercise authority over the organization, the corporate functions, the by-laws, nor the relations between the corporation and its members; nor to determine the rights and obligations of the corporation or its members, arising under the law of its creation, and depending on such

⁴⁰ Hartley v. Welsh, 23 Pa. Co. Ct. 78.

⁴¹ Com. v. Leisenring, 15 Phila. 215.

⁴² Curtis v. McCullough, 3 Nev. 202.

⁴³ Bishop v. Globe Co., 135 Mass. 132.

⁴⁴ Devens, J., in Kansas & E. R. R. Co. v. Topeka, S. & W. R. R., 135 Mass. 34, 40, 46 A. R. 439.

local law.”⁴⁵ It is immaterial that service may be had on the corporation and jurisdiction obtained over it; the reason for refusing jurisdiction of the subject-matter is the impropriety and futility of interfering in the internal affairs of the corporation. “The proceeding is such as not merely to affect its external relations, but also to involve its organic laws which are necessarily local, and require local administration.”⁴⁶

In accordance with this view, no action can be maintained to procure the cancellation of stock in a foreign corporation as illegally issued,⁴⁷ to restrain an increase of stock,⁴⁸ to determine the title to the share between two claimants,⁴⁹ to prevent the forfeiture of stock,⁵⁰ or to restore one who claims to be a member to his rights as such.⁵¹

In a case in an inferior court in New York, however, where the transfer books were within the State and the corporation interposed no objection to the jurisdiction, a bill to compel the transfer on the books of the foreign corporation of stock assigned to him was held not open to attack on demurrer.⁵² The court said: “Whether, when all the facts are developed on the trial, it will appear that the court should refrain from granting the decree prayed for on the ground that it could not be enforced or whether the relief should be granted because a part compliance can be compelled here on the ground that the case may be so plain that the decree would be adopted and enforced by the courts of New Jersey, are questions that will be addressed to the sound discretion of the trial court, but although argued at length they are not presented by these demurrers.”

⁴⁵ *Smith v. Mutual L. I. Co.*, 14 All. (Mass.) 336, 341.

⁴⁶ *Ibid.*, p. 343.

⁴⁷ *Gregory v. New York, L. E. & W. R. R.*, 40 N. J. Eq. 38; *American Grease Co. v. Vogellus*, 23 Pa. Co. Ct. 664, 9 Pa. Dist. R. 217.

⁴⁸ *Bill v. Sierra Nevada L. W. & M. Co.*, 29 L. J. Ch. 176.

⁴⁹ *Wilkins v. Thorne*, 60 Md. 253.

⁵⁰ *Sudlow v. Dutch Rhemish Ry.*, 21 Beav. 43.

⁵¹ *Smith v. Mutual L. I. Co.*, 14 All. (Mass.) 336.

⁵² *Ernst v. Elmira M. I. Co.*, 24 Misc. 583, 54 N. Y. S. 116.

But when the legal relation between a claimant of a share and the foreign corporation is not in question, but only the equitable right to the stock as between two claimants, this right may be determined, as it in no way involves the internal affairs of the corporation. Thus where a plaintiff claimed that he was entitled to stock held by the individual defendant as trustee, and filed a bill against the individual defendant, asking for a conveyance and an injunction pending suit against his voting on the stock, and against the foreign corporation to restrain it from receiving the vote, it was held that the bill must be dismissed as to the corporation, but could be maintained against the individual; and he was enjoined pending a decision of the principal question.⁵³ And in a Kentucky case it was held that the courts of a State in which a cancellation of a subscription to stock in a foreign corporation had been agreed to might pass on the legality of the cancellation.⁵⁴

§ 308. Assessments and dividends.

A bill cannot be maintained to order a foreign corporation to levy an assessment on the stockholders⁵⁵ or to restrain an assessment;⁵⁶ and a bill will not lie to order the payment of dividends⁵⁷ or to restrain such payment.⁵⁸ But an action at law may be maintained against a foreign corporation for guaranteed dividends on preferred stock, for that does not affect the internal affairs, and does not require any corporate act in declaring a dividend; it is only the collection of a debt.⁵⁹

On the same principle a contract to pay a certain part of the divisible surplus of a foreign corporation cannot be en-

⁵³ *Harper v. Smith*, (N. Y. App. Div.) 87 N. Y. S. 516.

⁵⁴ *Scottish S. Co. v. Starks*, (Ky.) 87 S. W. 455.

⁵⁵ *North v. Weaver E. M. B. M. Co.*, 3 Pa. Co. Ct. 316.

⁵⁶ *Taylor v. Mutual R. F. L. Assoc.*, 97 Va. 60, 33 S. E. 385, 45 L. R. A. 621.

⁵⁷ *Berford v. New York Iron Mine*, 56 N. Y. Super. 236, 4 N. Y. S. 836.

⁵⁸ *Howell v. Chicago & N. W. Ry.*, 51 Barb. (N. Y.) 378.

⁵⁹ *Prouty v. Michigan, S. & N. I. R. R.*, 1 Hun (N. Y.), 655.

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forced, since nothing is due until the books have been made up and the surplus declared, and the foreign court cannot order that to be done.⁶⁰

§ 309. Proceedings for accounting.

Where proceedings are instituted against officers of a corporation for an accounting and a restoration of property wrongly abstracted by them from the corporation, a bill may be brought in any jurisdiction where the officers are found. Thus upon a complaint by a minority stockholder against the majority alleging that the defendants had without authority increased the capital stock and issued it to themselves, and praying for a direction that it be returned and cancelled, the court of New York where the defendants were found took jurisdiction.⁶¹ Judge Cullen said: "The learned trial judge, in his opinion, has said, 'If this were an action simply to compel an accounting and the restoration, by parties within the jurisdiction, of property wrongfully taken or withheld, and to restore it even to a foreign corporation, the power of the court to entertain jurisdiction of the action could not be questioned.' This is, unquestionably, a correct statement of the law. . . . The right of the plaintiffs as stockholders to compel a restoration by the officers to the corporation is co-extensive with the right of the corporation itself. Surely the corporation would not be confined to the courts of the State which created it, but could pursue its officers in whatever jurisdiction it might find them; otherwise it would be remediless if those officers remained without the State."

So it was held in Massachusetts that where all the property of a foreign corporation was situated in that State and the directors resided therein, they might be held to account for corporation property wrongfully appropriated, though ordinarily the court would not interfere in internal management.⁶²

⁶⁰ *Fisher v. Charter Oak L. I. Co.*, 52 N. Y. Super. 179.

⁶¹ *Ernst v. Rutherford, etc., Co.*, 56 N. Y. S. 403, 38 App. Div. 388.

⁶² *Richardson v. Clinton Wall Trunk Mfg. Co.*, 181 Mass. 580, 64 N. E. 400.

The court said: "This part of the present plaintiff's case is rather in the nature of a suit by the corporation against wrongdoers whose persons and property are in this Commonwealth." But such action cannot be maintained by a creditor.⁶³

§ 310. Proceedings to restrain fraudulent dealings with property.

A court will not restrain the directors or majority stockholders of a foreign corporation from fraudulent disposal of the property. Thus, it will not enjoin the assignment of the property⁶⁴ nor the leasing of its property and franchises for an inadequate rental.⁶⁵ "It is almost too obvious for remark that this court cannot regulate the internal affairs of foreign corporations, nor can it enforce its decrees out of this State."⁶⁶ So a bill to compel a foreign corporation to do its duty to its stockholders and investigate an alleged fraud on the corporation cannot be maintained.⁶⁷

But a suit may be maintained against the assignee within the State of a foreign corporation to recover the property on the ground that it was transferred by fraud; the bill being allowed to lie at suit of a stockholder.⁶⁸ The suit does not involve the internal affairs of the corporation in any way.

§ 311. Proceedings to restrain the misuse of property.

A court will also unquestionably assume jurisdiction over a suit to prevent a corporation from misusing property, and especially land, within the State. This was an important feature of an Illinois case where the directors of a foreign cor-

⁶³ *Miller v. Quincy*, 88 App. Div. 529, 85 N. Y. S. 310.

⁶⁴ *Barclay v. Talman*, 4 Edw. Ch. (N. Y.) 123.

⁶⁵ *Gregory v. New York, L. E. & W. R. R.*, 40 N. J. Eq. 38; *Madden v. Pennsylvania E. L. Co.*, 181 Pa. 617, 37 Atl. 817, 38 L. R. A. 638. But see *Nash v. Hall*, 11 Misc. 468, 32 N. Y. S. 701.

⁶⁶ *Gregory v. New York, L. E. & W. R. R.*, *supra*, at p. 44.

⁶⁷ *Morris v. Stevens*, 6 Phila. 488.

⁶⁸ *Kidd v. New Hampshire Traction Co.*, (N. H.) 56 Atl. 465.

poration were enjoined from conveying land and other property in Illinois to an illegal trust.⁶⁹

§ 312. Recent tendency to take jurisdiction.

In other cases where the contest is without question one regarding the internal management of the corporation there has appeared a tendency to assume jurisdiction over a foreign corporation where the business is carried on within the State and all parties to the dispute are within its boundaries. Thus in the Illinois case just cited the directors of the American Glucose Company were enjoined from illegally making a contract in restraint of trade, at the suit of a minority stockholder.⁷⁰ In Massachusetts, also, *ultra vires* acts of directors were enjoined, all parties being resident within the State and the business there carried on,⁷¹ Judge Knowlton saying: "The corporation is doing business under our statutes in this Commonwealth. The plaintiff's rights are affected and his property is imperilled by the unlawful action of the defendants within our jurisdiction. The parties are all subject to the process of our courts. The plaintiff should have relief in a court of equity against the continuance of this violation of our law." And in *Ernst v. Rutherford & B. S. Gas Co.*⁷² the court spoke thus: "The learned judge, however, was of opinion that this action was more than for a restoration and accounting; that it was, in effect, an action to control the internal management of the corporation itself. Of an action of the last character he was of opinion that the corporation could only be called to account in the tribunals of the state which created it. We are not prepared to admit the correctness of the proposition as broadly as stated by the learned justice. If the illegal acts of the directors or of the corpora-

⁶⁹ *Harding v. American Glucose Co.*, 182 Ill. 551, 55 N. E. 577, 74 A. S. R. 189.

⁷⁰ *Harding v. American Glucose Co.*, 182 Ill. 551, 55 N. E. 577, 74 A. S. R. 189.

⁷¹ *Richardson v. Clinton Wall Trunk Mfg. Co.*, 181 Mass. 580, 64 N. E. 400.

⁷² 56 N. Y. S. 403, 405, 38 App. Div. 388, 392.

tion offended solely against the majesty of the state to which it owed its life,—in other words, constituted only public wrongs,—the proposition is probably correct; for we are not compelled, nor should we, entertain actions simply to redress the outraged dignity of foreign governments. But, if such illegal acts also cause injury to the property rights of individual stockholders who are citizens of this state, we cannot see why they are not entitled to obtain full relief in our courts, so far as such relief can be accomplished by acting directly on the persons of the defendants. A contrary rule would, in our judgment, be unfortunate at this time, when, for some reason, the majority of corporate enterprises in this state (those of a *quasi*-public nature, such as railroads, etc., excepted) are carried on under incorporations effected under the laws of other states. We are of opinion, however, that this action is strictly for restoration and an accounting, and therefore that the court had jurisdiction of the subject-matter."

CHAPTER XIV.

MEETINGS.

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| <p>§ 321. The corporation must organize in the State of charter.</p> <p>322. Stockholders' meetings must be held within the State of charter.</p> | <p>§ 323. Statutory provisions for stockholders' meetings.</p> <p>324. Directors may meet outside the State of charter.</p> <p>325. Statutory provisions for directors' meetings.</p> |
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§ 321. The corporation must organize in the State of charter.

The mere grant of a charter is not sufficient to create a corporation. The charter must be accepted and the organization perfected before the corporation is in existence. And these acts must be performed within the limits of the jurisdiction granting the charter. A corporation can act outside the state of its creation only by means of agents. These agents could not organize the corporation, for until after organization it could have no agents.¹

Confusion has sometimes arisen where the charter declares that certain persons shall be a corporation, and also designates them to act as the first board of directors. In such a case the Supreme Court of Missouri said: "The charter created a corporation *in presenti*, and appointed a board of directors without the necessity of any action on the part of the incorporators; and if any assent was necessary to infuse life into

¹ Duke v. Taylor, 37 Fla. 64, 19 So. 172, 31 L. R. A. 484; Freeman v. Machias Water Power Co., 38 Me. 343; Smith v. Silver Valley Mining Co., 64 Md. 85. *Contra*, Copp v. Lamb, 12 Me. 312.

It has, however, been held in Wisconsin that a corporation which accepts its charter and attempts to perfect its organization in another State than the one which chartered it, may be estopped to deny the validity of its organization if it has assumed to act as a corporation. Heath v. Mining Co., 39 Wis. 146.

this body politic, the proceedings of these directors, although had beyond the bounds and limits of Illinois were a sufficient expression of that assent." ² It seems clear that the court confounded the acts of these men as corporators with their acts as directors. In accepting the charter they were acting as corporators, not as directors, and they could so act only in Illinois.

§ 322. Stockholders' meetings must be held within the State of charter.

Not only the first meeting for organization but all other meetings of the shareholders must, at common law, be held within the State. The case commonly cited for this proposition is *Miller v. Ewer*.³ The controversy was over the title to certain land, the plaintiff claiming under a deed from a Maine corporation authorized by directors who had been elected by the shareholders at a meeting held in Boston. It was held that the conveyance passed no title, for the stockholders had no power to act as such outside the State of Maine. The court said: "As the corporate faculty cannot accompany the natural persons beyond the bounds of the sovereignty which confers it, and they cannot possess or exercise it there, they can have no more power there to make the artificial being act, than other persons not named or associated as corporators. Any attempt to exercise such a faculty there, is merely an usurpation of authority by persons destitute of it, and acting without any legal capacity to act in that manner. It follows that all votes and proceedings of persons professing to act in the capacity of corporators, when assembled without the bounds of the sovereignty granting the charter are wholly void." This case is law in every jurisdiction.⁴ The Supreme Court

² *Ohio & M. R. R. v. McPherson*, 35 Mo. 13.

³ 27 Me. 509.

⁴ *Wood Hydraulic H. M. Co. v. King*, 45 Ga. 34; *Reichwald v. Com. Hotel Co.*, 106 Ill. 439; *Harding v. Am. Glucose Co.*, 182 Ill. 551, 55 N. E. 577, 74 A. S. R. 189; *Aspinwall v. Ohio & Miss. R. R.*, 20 Ind. 492; *Freeman v. Machias Water Power Co.*, 38 Me. 343; *Thompson v. Natches Water Co.*,

of Missouri has indeed expressed a contrary opinion. Admitting that the meeting for organization must be held within the charter State, the court said that after they had created a full-fledged corporation the stockholders might as well elect directors as the directors a treasurer in another State.⁵ This opinion, however, has not been adopted elsewhere, and even seems to have been disregarded in Missouri.⁶ The reason for a distinction between stockholders and directors will appear below.

Even where a clause in the charter of a corporation authorizes it "to do business" outside, this does not give the corporation power to hold meetings of the shareholders outside.⁷

It may be that although officers elected at a stockholders' meeting outside the State of charter are illegally elected, yet if the corporation is actually in existence it will be estopped to deny that they act for it.⁸ So it was held by the Supreme Court of the United States that all stockholders who took part in a meeting outside the State were bound by a vote to increase the stock passed at the meeting.⁹ And it would seem to be true that the legality of such election could not be questioned by a creditor who had dealt with the corporation, knowing the facts. It is open only to the State.¹⁰

In a few States express statutory permission is given to

68 Miss. 423 (*semble*); *McOrmsby v. Vermont Copper Min. Co.*, 56 N. Y. 623.

⁵ *Ohio & M. R. R. v. McPherson*, 35 Mo. 13. See *Filli v. Delaware, L. & W. Ry.*, 37 Fed. 65, where it would appear that a corporation was in the habit of holding its annual elections in a foreign State.

⁶ *Camp v. Byrne*, 41 Mo. 525.

⁷ *Franco-Texas Land Co. v. Laigle*, 59 Tex. 339.

⁸ *Heath v. Silverthorn L. M. & S. Co.*, 39 Wis. 146. The court cited in support of its decision a dictum in *Miller v. Ewer*, 27 Me. 509, 524; and also cases in which a corporation was estopped to deny its liability upon a contract *ultra vires*, a principle which is evidently not analogous. *Acc. Camp v. Byrne*, 41 Mo. 525 (*semble*).

⁹ *Handley v. Stutz*, 139 U. S. 417, 35 L. ed. 227.

¹⁰ *Wright v. Lee*, 2 S. D. 596, 51 N. W. 706.

hold stockholders' meetings outside the State; and where that is the case, provided the corporation has once been effectually organized, the meeting outside the State is valid; not it is true as a real corporate act, but as the act of individuals authorized by the law of the charter to act for the corporation and thus to affect its rights and liabilities.

It is often said that no corporate act can be done outside the State of charter.¹¹ Properly understood, this is no doubt true. In a sense everything which a corporation does by means of its agents or otherwise is a corporate act—since it is the act of the principal, that is, the corporation. In this sense the expression of course is not true. But any act which must be performed by the shareholders themselves in their capacity as shareholders must be done within the limits of the State creating the corporation. Anything else, in the absence of prohibitory legislation, may be done outside as well as within.

§ 323. Statutory provisions for stockholders' meetings.

In several States it is expressly provided by statute that the stockholders' meetings shall be held within the State.¹² In others, however, permission is given freely to hold the meetings outside the State.¹³ In a few States the statute even

¹¹ *Reichwald v. Com. Hotel Co.*, 106 Ill. 439; *Aspinwall v. Ohio & Miss. R. R.*, 20 Ind. 492.

¹² Cal. Civ. Code, § 319; Ida. Rev. Stat. § 2116; La. Rev. Stat. § 741; Mass. 1903, ch. 437, § 20; Mont. Civ. Code, § 448; N. J. Corp. Supp. § 44; N. Car. 1901, ch. 2, § 49; N. Dak. Civ. Code, § 2898. At least one meeting annually within the State: S. Car. Code, § 1846.

¹³ *Alabama*. "Any mining or manufacturing corporation of the State, by so providing in the declaration of incorporation or afterwards by regulation of the stockholders, may "hold meetings of its stockholders and directors, one or both, and do and perform all kinds of corporate acts in any other State or States of the United States, as may be declared in such declaration or resolution, and at such time and place as the stockholders, as to their meeting, or the directors, as to their meeting, may deem it advisable. Provided, however, that when such meetings are provided for by resolution of the stockholders, all the stockholders who are residents of this State shall

gives permission to organize the corporation outside the State;¹⁴ but this probably cannot be done, in spite of the statute. If meetings are held outside the State, it is usually provided that an office shall be kept within the State.

§ 324. Directors may meet outside the State of charter.

All acts not requiring the assent of the stockholders which may be done through agents may be done as well outside as inside the State of charter, unless the charter itself forbids it. Thus the directors, being merely the agents of the corporation, may meet outside the State of charter.¹⁵ So the Supreme consent thereto in writing or by vote at the meeting provided therefor." Ala. 1901, No. 918, § 1.

Delaware. After organization, if the by-laws so provide. Del. 1901, ch. 167, § 32.

Michigan. Any meeting of stockholders may be held outside the State and within the United States. Mich. 1903, Act 232, § 20.

Minnesota. Gen. Stat. §§ 2833, 3407.

Nevada. If the by-laws so provide. Nev. 1903, ch. 121, § 14.

New Mexico. "Whenever a majority of the stock of any corporation is held or owned in any other State or Territory the principal office of such corporation may be in such other State or Territory; and the meetings of the stockholders and board of directors of such company may be held in such other State or Territory." N. Mex. Comp. L. § 456.

Pennsylvania. "In all cases where any company has been incorporated under the laws of this State, and a majority of the directors, corporators or stockholders thereof are citizens of any other State, said corporation may be organized and all the meetings of such corporators, directors or stockholders held in such place, whether in this State or elsewhere, as such majority may from time to time appoint; provided, however, that the annual election of officers of such corporation shall be held in the State of Pennsylvania." Pa. 1865, P. L. 1866, p. 1228, § 1.

West Virginia. "The stockholders may hold meetings for the transaction of the lawful business of the corporation, including the first general meeting for purposes of organization, and keep the principal office of such corporation either in or out of this state. But no meeting of stockholders shall be held at any other place than the principal office of the corporation unless the by-laws so provide, without the authority of the stockholders." W. Va. Code, ch. 54, § 23, as amended 1901, ch. 35.

¹⁴ Pa., W. Va., *supra*.

¹⁵ Wood H. M. Co. v. King, 45 Ga. 34; Smith v. Silver Valley Mining Co., 64 Md. 85 (*semble*); Missouri Lead M. & S. Co. v. Reinhard, 114 Mo. 218, 21 S. W. 488, 35 A. S. R. 74; Smith v. Alvord, 63 Barb. (N. Y.) 415;

Court of Vermont upheld a mortgage of a Vermont corporation, approved at a meeting of the directors in Massachusetts, saying: "This was no more a corporate act than any ordinary contract, which it is admitted can be done outside. They act in neither case as the corporation, but as the agents of and on behalf of the corporation."¹⁶ So a conveyance voted by directors outside the State is not invalid on that account;¹⁷ and the same is true of an issue of bonds ordered by the directors at a meeting outside the State.¹⁸ So an election of a secretary, made by the directors outside the State, is valid.¹⁹

If the directors do an act outside the State which they have power to do without the authority of a stockholders' vote, the fact that the corporation met outside the State and attempted to authorize the act would, of course, not affect its validity.²⁰

A corporation may, of course, be required to hold all directors' meetings within the State; and in that case a vote of the directors outside the State is invalid.²¹ In such a case the act of the directors outside the State, though *ultra vires*, would, it seems, not be absolutely void, as a stockholders' meeting outside the State must be; and the corporation might therefore be estopped to deny the validity of the act.²² And

Wright v. Lee, 2 S. D. 596, 51 N. W. 706. But see McOrmsby v. Vermont Copper Mining Co., 56 N. Y. 623 (*semble contra*). See also Brockway v. Gadsden Min. Land Co., 102 Ala. 620, 15 So. 431 (*semble*), that there must be affirmative permission in the charter.

¹⁶ Arms v. Conant, 36 Vt. 744. Acc. Reichwald v. Com. Hotel Co., 106 Ill. 439; Wright v. Bundy, 11 Ind. 398; Saltmarsh v. Spalding, 147 Mass. 224, 17 N. E. 316.

¹⁷ Bellows v. Todd, 39 Ia. 209; Miller v. Ewer, 27 Me. 509 (*semble*); Missouri L. M. & S. Co. v. Reinhard, 114 Mo. 218, 21 S. W. 488, 35 A. S. R. 74.

¹⁸ Galveston R. R. v. Cowdrey, 11 Wall. 459, 20 L. ed. 199; Thompson v. Natchez W. & S. Co., 68 Miss. 423, 9 So. 821; Bassett v. Monte Christo Mining Co., 15 Nev. 293; Smith v. Alvord, 63 Barb. (N. Y.) 415.

¹⁹ McCall v. Byram Mfg. Co., 6 Conn. 428.

²⁰ Thompson v. Natchez W. & S. Co., 68 Miss. 423, 9 So. 821.

²¹ Hilles v. Parrish, 14 N. J. Eq. 380, 383.

²² Galveston R. R. v. Cowdrey, 11 Wall. 459, 476, 20 L. ed. 199; and see Wheelwright v. St. Louis, N. O. & O. C. T. Co., 56 Fed. 164.

if the directors did actually go into the charter State to act, though the majority went there only for that purpose and staid only long enough to hold the meeting, their act is valid.²³

§ 325. Statutory provisions for directors' meetings.

Though it seems clear at common law that it is permitted to hold directors' meetings in any State if not forbidden by statute, nevertheless, in several States express statutory permission has been given for that purpose.²⁴

A few States, on the other hand, provide that the meetings of the directors must be held within the State.²⁵

²³ *Wheelwright v. St. Louis, N. O. & O. C. T. Co.*, 56 Fed. 164.

²⁴ *Mass.* 1903, ch. 437, § 25 (of business corporations); *Mich.* 1903, Act 232, § 20; *Minn. Gen. Stat.* § 3407; *N. Car.* 1901, ch. 2, § 49.

If the by-laws so provide: *Del.* 1901, ch. 167, § 32; *Ill. Rev. Stat.* ch. 32, § 20; *Mont. Civ. Code*, § 448; *Nev.* 1903, ch. 121, § 14; *N. J. Corp. Sup.* § 44.

Unless the by-laws provide otherwise: *W. Va. Code*, ch. 53, § 51.

If so provided in the declaration of incorporation or by regulation of the stockholders: *Ala.* 1901, No. 918, § 1.

If the by-laws so provide, except the meetings for election of officers: *N. Dak. Civ. Code*, § 2898; but if there is a resident director or agent, any meeting may be held out of the State: *N. Dak. Civ. Code*, § 2899.

If a majority of the stock is owned in another State: *N. Mex. Comp. L.* § 456.

If a majority of the directors, corporators or stockholders are citizens of any other State: *Pa.* 1865, P. L. 1866, p. 1223, § 1.

If it shall be stated in the certificate of incorporation that meetings of the directors or trustees may be held beyond the limits of this State, or such meeting was authorized or its acts ratified by a vote of a majority of the stockholders at a regular meeting. *Colo. Stat.* § 493.

²⁵ *Cal. Civ. Code*, § 319; *Ida. Rev. Stat.* § 2116; *La. Rev. Stat.* § 741.

CHAPTER XV.

OFFICERS, OFFICE, AND BOOKS OF THE CORPORATION.

§ 331. Election of directors by classes.	§ 336. Principal office of the corporation.
332. Cumulative voting.	337. Books to be exhibited to stockholders.
333. Residence as qualification for directors.	338. Inspection of stock-books by creditors.
334. Executive committee.	339. Examinations and special reports of corporate affairs.
335. Resident officers required.	

§ 331. Election of directors by classes.

In several States permission is given to provide in the by-laws for the election of directors in classes, a certain portion of the board being elected each year to serve for several years.¹ In some States there must be three classes, one class to be elected each year for three years;² in others, no class shall be elected for a shorter period than one year or for a longer period than five years, and the term of office of at least one class shall expire in each year.³ In New York at least one-fourth of the directors shall be elected annually.⁴

§ 332. Cumulative voting.

Cumulative voting for directors is permitted in several States.⁵ One form of statute is permissive, such as that of

¹ Conn. 1903, ch. 194, § 10; Del. 1899, ch. 273, § 20; Ky. Stat. § 551; Mass. 1903, ch. 437, § 18 (business corporations); Minn. Gen. Stat. § 3407; N. Y. 1901, ch. 354; N. Car. 1901, ch. 2, § 14; Pa. 1887, P. L. 165, § 1; P. L. 411, § 1; Va. Corp. Supp. ch. 5, § 12; Wis. Stat. § 1771.

² Del. *ubi supra*; Ky. *ubi supra*.

³ Conn. *ubi supra*; Mass. *ubi supra*; N. Car. *ubi supra*.

⁴ N. Y. *ubi supra*.

⁵ Cal. Const. Art. 15, § 12, Civ. Code, § 307; Colo. Ann. Stat. § 481 (as amended 1895); Ida. Const. Art. 11, § 4; Kan. Stat. ch. 66, § 27; Ky. Stat.

New York,⁶ which permits the certificate of incorporation to provide that "at all elections of directors each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director, or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting."⁷ But a commoner form is compulsory, like the provision in the Constitution of California:⁸

"In all elections for directors or managers of corporations, every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner."⁹ In Nevada it is provided, however, that "a different plan or method of voting, limiting and regulating the mode of voting, may be prescribed in said certificate or articles of incorporation, original or amended, and when so prescribed shall be observed and shall govern;"¹⁰ and in Mississippi is this limitation on the right to cumulate: "A person who is engaged or interested in a competing business, either individually or as an employee or stockholder, shall

§ 552; Mich. 1885, Art. 112, § 1; Miss. Stat. § 837; Mo. Rev. Stat. § 953; Mont. Const. Art. 15, § 4, Civ. Code, § 436; Neb. Const. Art. 11, § 272; Nev. 1903, ch. 121, § 20; N. J. 1900, P. L. 418; N. Y. 1901, ch. 355; N. Dak. Civ. Code, § 2388; Oh. Rev. Stat. § 3245, cl. 1, 2; Pa. Const. Art. 16, § 4; S. Car. Const. Art. 9, § 11; W. Va. Const. Art. 11, § 4, Code, ch. 53, § 44.

⁶ N. Y. *ubi supra*.

⁷ So N. J., Oh., *ubi supra*.

⁸ *Ubi supra*.

⁹ So Colo., Ida., Kan., Ky., Mich., Miss., Mo., Mont., Neb., N. Dak., S. Car., W. Va., *ubi supra*.

¹⁰ Nev. *ubi supra*.

not serve on any board of directors or any corporation without the consent of a majority in interest of the stockholders thereof.”¹¹ The Pennsylvania provision is rather ambiguous: “In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.”¹² It is held that this provides for cumulative voting, and that a shareholder has as many votes for each share as there are directors to be elected.¹³

In Maryland there is the general direction that “the corporation may provide in its charter or by-laws for minority representation in the election of trustees, managers or directors.”¹⁴

§ 333. Residence as qualification for director.

In many States a qualification of residence is required for directors. In one State, all the directors must be residents or citizens of the State of charter, if not otherwise provided in the by-laws.¹⁵ In a number of States a majority of the directors must be resident;¹⁶ in other States one-third of the directors¹⁷ or three¹⁸ or two of the directors¹⁹ or at least one of the directors²⁰ must be resident.

¹¹ Miss. *ubi supra*.

¹² Pa. *ubi supra*.

¹³ Com. v. Lintsman, 23 Pittsb. L. J. 122.

¹⁴ Md. Gen. L. Art. 23, § 58.

¹⁵ W. Va. Code, ch. 53, § 49.

¹⁶ Cal. Civ. Code, § 305; Dist. Col. Code, § 608; Ida. Civ. Code, § 2102; Md. Gen. L. Art. 23, § 57; Oh. Rev. Stat. § 3248; Ore. Misc. L. § 3224, amended 1901, p. 306. In Cal., Ida. and Oh. they must also be citizens.

¹⁷ N. Mex. Comp. L. § 420; Pa. 1887, P. L. p. 281, § 1.

¹⁸ Kan. Stat. ch. 66, § 42.

¹⁹ N. Y. Gen. Corp. L. § 29; Vt. Stat. § 3717.

²⁰ Del. Corp. Supp. § 9; N. J. Corp. Supp. § 12; N. Car. 1901, ch. 2, § 14; N. Dak. Civ. Code, § 2889; Utah, Rev. Stat. § 324; Wash. Corp. Supp. § 7. “The removal of such resident director from the State shall cause a vacancy” in North Dakota. “But in cases of consolidated corporations with franchises in two or more States, or States and Territories, or of corporations engaged in interstate commerce, no qualification of residence or stock

In Maryland all the directors must be "citizens of the United States and a majority of them citizens of this State; or unnaturalized residents who have declared their intention of becoming citizens."²¹ A majority must be citizens of the United States in New Mexico and Washington;²² and in Indiana all must be residents of the United States.²³

§ 334. Executive committee.

In a few States the directors are allowed to elect an executive committee from their number, and to delegate legal powers to it.²⁴ It has been held in New York that the directors have power to do this under the general law, without express statutory authority.²⁵

§ 335. Resident officers required.

In several States the clerk is required to be a resident of the State of charter;²⁶ in some of them the treasurer also;²⁷ and in Missouri the president as well.²⁸

§ 336. Principal office of the corporation.

It would seem to be the duty of a corporation to keep an office in the State of its charter, and there have its books and records; for this appears to be necessary in order that the State may exercise proper control over its corporation.²⁹ It ownership shall be necessary unless required by the articles of incorporation." Utah, *ubi supra*.

²¹ Md. *ubi supra*.

²² Ubi *supra*.

²³ Ind. Rev. Stat. § 5054.

²⁴ Mass. 1903, ch. 437, § 19; W. Va. Code, ch. 53, § 53, as amended 1901, ch. 35.

²⁵ Sheridan E. L. Co. v. Chatham Nat. Bank, 127 N. Y. 517, 28 N. E. 467.

²⁶ Ark. Stat. § 1332; Me. Rev. Stat. ch. 47, § 20; Mass. 1903, ch. 437, § 18; Mich. 1903, Act 232, § 6; Minn. Gen. Stat. § 2811; Mo. Rev. Stat. § 954; N. H. Stat. ch. 147, § 10; Vt. Stat. § 3712.

²⁷ Ark., Mich., Minn., Mo., *ubi supra*.

²⁸ Mo. *ubi supra*.

²⁹ State v. Park & Nelson Lumber Co., 58 Minn. 330, 59 N. W. 1048; Simmons v. Norfolk & Balt. S. B. Co., 113 N. C. 147, 37 A. S. R. 614; State v. Milwaukee, L. S. & W. Ry., 45 Wis. 579. But see Mor. Corp. 361.

has even been held that failure to do this is sufficient ground for depriving the corporation of its charter on the ground of misuser.³⁰ But there seems to be no doubt that an issue of a certificate of stock is valid, though made outside the State of charter.³¹

Unless express permission is given by statute, the principal office of a corporation must be in the State of charter; and if, without such permission, the directors should remove the office to another State it has been held that all their acts there would be void, in spite of statutory permission for them to meet outside the State. Such permission is given under the supposition that a principal office shall be maintained within the State.³²

In a number of States it is provided that though the directors may meet abroad, the principal office of the corporation shall nevertheless be maintained within the State³³ where process may be served,³⁴ and the corporation shall keep its books, or at least its stock-books³⁵ there, and a record of the proceedings of such meeting.³⁶

§ 337. Books to be exhibited to stockholders.

In most States it is expressly provided by statute that the books of the corporation shall be open to the inspection of the stockholders; and in particular that a stock-book shall be kept and exhibited to stockholders.³⁷ A common form is that of the California Civil Code:

³⁰ *State v. Park & Nelson Lumber Co.*, 58 Minn. 330, 59 N. W. 1048; *State v. Milwaukee, L. S. & W. Ry.*, 45 Wis. 579.

³¹ *Courtwright v. Deeds*, 37 Ia. 503.

³² *McConnell v. Combination M. & M. Co.*, (Mont.) 76 Pac. 194.

³³ Ala. 1901, No. 918, § 2; Del. 1901, ch. 167, § 32; Mich. 1903, Act 232, § 20; Minn. Gen. Stat. § 2801; Mont. Civ. Code, § 448; Nev. 1903, ch. 121, § 14; N. J. Corp. Supp. § 44; N. Mex. Comp. L. § 456; N. Car. 1901, ch. 2, § 49; N. Dak. Civ. Code, § 2898.

³⁴ Ala. *ubi supra*, § 3; Mich. *ubi supra*; Minn. *ubi supra*; N. Mex. *ubi supra*; N. Dak. *ubi supra*, § 2899.

³⁵ Nev. *ubi supra*; N. J. *ubi supra*; N. Car. *ubi supra*; N. Dak. *ubi supra*.

³⁶ Ala. *ubi supra*, § 2; Mont. *ubi supra*.

³⁷ Ari. Rev. Stat. § 773; Cal. Civ. Code, § 378; Colo. Stat. § 508, as amended

"Corporations for profit must keep a book, to be known as the 'stock and transfer book,' in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe." ³⁸

In other States the statute provides simply for a list of the present shareholders and the number of shares held by each; ³⁹ or for the names of those who are or for a year have been stockholders, with their residences, number of shares, dates of alienation, and amount paid. ⁴⁰

These provisions probably do not add to the obligations of the common law. At proper times and for proper purposes a stockholder can inspect corporate books, and enforce the right by *mandamus*. ⁴¹ But at common law the writ will not be granted in favor of a stockholder who intends to make an improper use of the information.

"The right is not to be given to gratify curiosity or for speculative purposes, but only when its exercise is sought in good faith, and for a specific purpose. Such purpose must appear by the proofs on the application, or the writ will be

1893, p. 90, § 1; Conn. 1903, ch. 194, § 16; Dist. Col. Code, §§ 627, 630; Fla. Rev. Stat. § 2133; Hawaii Civ. L. § 2021; Ida. Rev. Stat. § 2151; Ind. Rev. Stat. § 3433; Kan. Stat. ch. 66, § 31; Ky. Stat. § 546; Me. Rev. Stat. ch. 47, § 20; Md. Gen. L. Art. 23, § 72; Mass. Rev. L. ch. 109, § 32, 1903, ch. 437, § 30; Minn. Gen. Stat. § 3429e; Mo. Rev. Stat. § 966; Mont. Civ. Co. § 541; Nev. 1903, ch. 121, § 71; N. H. Pub. Stat. ch. 148, § 12; N. J. Corp. Supp. § 33; N. Mex. Comp. L. § 451; N. Y. 1901, ch. 354; N. Dak. Civ. Code, § 2907; Ore. Misc. L. § 3228; Okla. Stat. § 979; S. Dak. Code, § 444; Wash. Corp. Supp. § 18; Wis. Rev. Stat. § 1757.

³⁸ Cal., Ida., Mont., N. Dak., Okla., S. Dak. And so substantially Ari., Ore.

³⁹ Conn., Fla., Ind., Me., Md., Mass., Mo., Nev., N. J., N. Y., Wash.; and the amount paid in on each share; Wis.

⁴⁰ Col., N. Mex.; within six years, D. C.

⁴¹ Rosenfeld v. Einstein, 46 N. J. L. 479, 481.

denied.⁴² The allowance of the writ is within the discretion of the court upon the facts presented in each particular case."⁴³

This common-law principle seems to apply to the right given to the stockholder to inspect books. The power of the court to compel a corporation to exhibit its books to a stockholder is discretionary, and should not be exercised where the stockholder wishes to inspect the books for the purpose of annoying the corporation or for any purpose except the protection of his own interest.⁴⁴ The statute was thus construed in a recent New Jersey case⁴⁵ in which it was held that the statute does not extend the right of the stockholder to examine corporate books, beyond that accorded to him by common law; that the original purpose of the act, which was to prevent fraudulent elections, must be construed into the act; and that a stockholder who acquired shares for the purpose of making an examination of the books of the company for a purpose not germane to his status as a stockholder does not thereby become entitled to make such examination.⁴⁶

⁴² Citing *In re Steinway*, 159 N. Y. 250, 53 N. E. 1103, 45 L. R. A. 461; *Phoenix Iron Co. v. Com.*, 113 Pa. 563, 6 Atl. 75.

⁴³ *State v. Hoboken, P. & P. Co.*, 67 N. J. L. 119, 50 Atl. 906.

⁴⁴ *People v. Produce E. T. Co.*, 53 App. Div. 93, 65 N. Y. S. 926.

⁴⁵ *O'Hara v. National Biscuit Co.*, (N. J.) 54 Atl. 241.

⁴⁶ See Dill on Corporations, §§ 33, 44. Mr. Dill says: "The following provision has been inserted in several certificates of incorporation for the purpose of limiting such examination.

"The corporation shall keep at its registered office in this State the transfer books, in which the transfers of stock shall be registered, and the stock-books, which shall contain the names and addresses of the stockholders and the number of shares held by them respectively, which shall at all times during the usual hours for business be open to the inspection of a stockholder in person with respect to his interest as such stockholder, or for a purpose germane to his status as such, upon application in writing to the registered agent of the corporation in charge of such office and having the custody of said books; but the registered agent may refuse permission to any stockholder to examine the same, (except as to the entries affecting the shares owned by such stockholder) unless and until satisfied that such examination and the information to be acquired thereby are for a legitimate purpose and not for a purpose hostile to the interests of the corporation or its individual stockholders, and the determination of the registered agent shall be final,

§ 338. Inspection of stock-books by creditors.

In order to enforce the stockholder's liability, it is necessary for the creditor to learn the names of the stockholders. This he could probably do without express aid from statute, by a bill for discovery or by interrogatories: but in several States a creditor is allowed to inspect the stock-books for the purpose of investigating the stockholders and their liability.⁴⁷ In a few States the provision is more liberal; as that the book shall be open to the inspection of the creditor and his attorney,⁴⁸ or of any person doing business with the corporation,⁴⁹ or of any person interested.⁵⁰ In other States something more is required, as that the person obtaining the inspection should be a judgment creditor;⁵¹ a judgment creditor who has an execution against the corporation;⁵² an officer holding execution against the corporation;⁵³ a person presenting a sworn affidavit that he is a creditor.⁵⁴ In Wisconsin it is provided that "every creditor of a corporation shall be informed at any time of the amount of capital stock of such corporation subscribed, the amount paid in, who the stockholders are, the number of shares of stock owned by each, and the amount unpaid by each stockholder upon the shares owned by him, and if any shares of stock which were not fully paid for have been transferred within six months of the time of inquiry,

conclusive and binding upon all stockholders and all persons claiming under such stockholders.' "

⁴⁷ Cal. Civ. Code, § 378; Col. Stat. § 508, amended 1893, p. 90, § 1; Ga. Code, § 1891 (when shareholders are individually liable); Hawaii Civ. L. § 2021; Ida. Rev. Stat. § 2151; Ind. Rev. Stat. § 3433; Md. Gen. L. Art. 23, § 72; Mont. Civ. Code, § 541; N. Mex. Comp. L. § 451; N. Dak. Civ. Code, § 2807; Okla. Stat. § 979; S. Dak. Code, § 444; Wash. Corp. Supp. § 18.

⁴⁸ N. H. Pub. Stat. ch. 148, § 12.

⁴⁹ Me. Rev. Stat. ch. 47, § 20; Ore. Misc. L. § 3223.

⁵⁰ Ky. Stat. § 546.

⁵¹ N. Y. 1901, ch. 354.

⁵² Kan. Stat. ch. 66, § 52.

⁵³ Fla. Rev. Stat. § 2153.

⁵⁴ Nev. 1903, ch. 121, § 72. In Connecticut, a creditor of such stockholder as he seeks information about. Conn. 1903, ch. 194, § 39.

the name of the person who transferred the same and the amount due thereon at the date of such transfer.”⁵⁵

§ 339. Examinations and special reports of corporate affairs.

In a few States it is expressly provided that “The Legislature, or either branch thereof, may examine into the affairs and condition of any corporation in this State at all times; and for that purpose, any committee appointed by the Legislature, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe.”⁵⁶ In California the Attorney General, when required by the Governor, may make a similar examination.⁵⁷ In a few States it is provided that a special report of the affairs of the corporation shall be furnished (not oftener than once in six months) at the request of fifteen per cent. of the stockholders,⁵⁸ or one-third of the stockholders.⁵⁹

In New Jersey and North Carolina “the court of chancery or the supreme court, or any justice thereof, may, upon proper cause shown, summarily order any or all of the books of said corporation to be forthwith brought within this state, and kept therein at such place and for such time as may be designated in such order, and the charter of any corporation failing to comply with such order may be declared forfeited by the

⁵⁵ Wis. Rev. Stat. § 1757.

⁵⁶ Cal. Civ. Code, § 383; N. Dak. Civ. Code, § 2942; Okla. Stat. § 1012; S. Dak. Code, § 478; and a more general provision to the same effect, W. Va. Code, ch. 53, § 60.

⁵⁷ Cal. Civ. Code, § 382.

⁵⁸ Colo. Stat. § 507; Wyo. Rev. Stat. § 3057.

⁵⁹ Kan. Stat. ch. 66, § 31; Minn. Gen. Stat. § 2800.

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court making such order, and it shall thereupon cease to be a corporation, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of such order." ⁶⁰

⁶⁰ N. J. Corp. Supp. § 44; N. Car. 1901, ch. 2, § 49.

CHAPTER XVI

STOCK AND BONDS.

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§ 341. Scope of the chapter.

This chapter is intended to contain only a rather fragmentary statement of such statutory provisions as to stocks and bonds as it would interest incorporators and investors to know. Questions of mere practice and detail have been omitted. For instance, the elaborate provisions for making calls for the payment of subscribed capital, and for sale of shares for non-payment of calls, have been altogether omitted. The statutes imposing liability on stockholders and directors will be found in the next chapter.

§ 342. Payment for stock.

It is provided in many States that "no corporation shall
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issue either stock or bonds except for money, labor done or property actually received;"¹ and it is usually added that "all fictitious issues"² or "all fictitious increase of capital stock shall be void."³

In Delaware, "in the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive."⁴

In Kentucky, "neither labor nor property shall be received in payment of stock or bonds at a greater value than the market price at the time said labor was done or property delivered;"⁵ and in Wisconsin the property must be estimated at its true money value, equal to the par value of the stock, and actually received.⁶ In Louisiana a corporation making a fictitious issue of stock forfeits its charter.⁷

In Florida the capital stock shall be paid in money "unless it be stated in the charter that the capital stock or some therein designated portion of the stock shall be payable in property, labor or services at a just valuation to be fixed by the corporators, or by the directors at a meeting called for such purpose. Property, labor or services may also be purchased or paid for with capital stock at a just valuation of such property, labor or services, to be fixed by the directory of the company at a meeting called for such purpose."⁸

In Wisconsin is this proviso: "provided that any corpora-

¹ Ala. Const. Art. 234; Cal. Const. Art. 12, § 11, Civ. Code, § 359; Del. Const. Art. 9, § 3; Ida. Const. Art. 11, § 9; Ky. Stat. § 568; La. Const. Art. 266; Mo. Rev. Stat. § 962; Mont. Const. Art. 15, § 10; N. Y. Stock Corp. L. § 42, as amended 1901, ch. 354; N. Dak. Const. § 138, Civ. Code, § 2877; Pa. Const. Art. 16, § 7; S. C. Const. Art. 9, § 10; S. Dak. Const. Art. 17, § 8; Wis. Rev. Stat. § 1753. To the same effect Mass. 1903, ch. 437, § 14 (as to business corporations).

² La., Mo., *ubi supra*.

³ Ala., Cal., Ida., Ky., Mo., Mont., N. Dak., Pa., S. Car., S. Dak., Wis., *ubi supra*.

⁴ Del. *ubi supra*.

⁵ Ky. *ubi supra*.

⁶ Wis. *ubi supra*.

⁷ La. *ubi supra*.

⁸ Fla. Rev. Stat. § 2128, as amended 1901, ch. 4897.

tion whose stock or bonds have been or shall be admitted to the stock exchange of Chicago, New York, Boston or Philadelphia, or of either of them, may sell such stock or bonds so admitted at the best price or prices current for the time being obtainable therefor on any of the said exchanges at which the same shall be offered for sale.”⁹

In a few States it is provided that nothing but money shall be considered as payment of any part of the capital stock except as follows:

“Any corporation formed under this act may purchase mines, manufactories or other property necessary for its business, or the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this act; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.”¹⁰

“The directors or trustees of any corporation may purchase mines, manufactories and other property necessary for their business and issue stock to the amount of the value thereof in payment therefor; and the stock so issued shall be declared and taken to be full-paid stock.”¹¹

“If any stock shall be paid for otherwise than in cash, a majority of the directors shall make and sign upon the record book of the corporation a statement showing particularly of

⁹ Wis. Rev. Stat. § 1753.

¹⁰ N. J. Corp. Supp. §§ 47, 48; N. Y. Stock Corp. L. § 42, as amended 1901, ch. 354; N. Car. 1901, ch. 2, §§ 53, 54.

¹¹ Colo. Stat. § 490.

what the property received in payment for stock subscriptions consists, and that it has an actual value equal to the amount for which it is so received. The judgment of the directors as to the value of property accepted in payment of stock shall be final; but the directors concurring in the judgment of such value, in case of fraud in the over-valuation of such property, shall be jointly and severally liable to the corporation for the amount of the difference between the actual value of any property so accepted in payment at the time of such acceptance, and the amount for which it is received in payment. The secretary shall keep a record of the names of the directors concurring in such judgment of value." ¹²

"Any corporation may purchase mines, manufactories and other property necessary for its business, and the stock of any company or companies owning, mining, manufacturing or producing materials or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and may likewise issue stock for services rendered to such corporation; and the stock so issued shall be full paid stock and not liable to any further call or payment thereon; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased, or services rendered, shall be conclusive." ¹³

In Maryland the provisions are as follows:

"Subscriptions for capital stock may be made in land or other property proper for the corporation to own for the advancement of its purposes, at a valuation agreed upon between the corporation and the subscriber, when authorized by a stockholders' meeting specially called for that purpose.¹⁴ In such case the books of the company shall show what property was received for the stock, at what value, and the number of shares issued for it." ¹⁵

¹² Conn. 1903, ch. 194, § 12.

¹³ Me. Rev. Stat., ch. 47, § 50.

¹⁴ Md. Gen. L. Art. 23, § 61.

¹⁵ *Ibid.* § 62.

"The conveyance to the corporation of real or personal property at a fair valuation shall be a sufficient paying in of its capital stock to the extent of such value, if a statement, made, signed and sworn to by its president, treasurer and a majority of its directors, giving a description of such property and the value at which it has been taken in payment, in such detail as the commissioner of corporations shall require or approve, and indorsed with his certificate that he is satisfied that said valuation is fair and reasonable, is filed with the secretary of the commonwealth. Such statement shall be included in the certificate of payment of capital." ¹⁶

"Capital stock may be issued for cash, property, tangible or intangible, services or expenses. Stock which is issued for cash may be paid for in full before it is issued or by instalments. . . . No stock shall be at any time issued unless the cash, so far as due, or the property, services or expenses for which it was authorized to be issued has been actually received or incurred by, or conveyed or rendered to, the corporation; and the president, treasurer and directors shall be jointly and severally liable to any stockholder of the corporation for actual damages caused to him by such issue." ¹⁷

"The directors of any corporation may purchase mines, manufactories and other property necessary for its business and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call, neither shall the holders thereof be liable for any further payments. . . . In all statements and reports of the corporation to be published, this stock shall not be stated or reported as being issued for cash paid into the corporation, but shall be reported in this respect according to the facts." ¹⁸ The Montana Act adds: "Provided, That on mines any arbitrary value may be fixed and such value shall, regardless of the actual value, be

¹⁶ Mass. Rev. L. ch. 110, § 44 (not in force as to business corporations).

¹⁷ Mass. 1903, ch. 437, § 14 (as to business corporations).

¹⁸ Mont. Civ. Code, § 410; Wyo. Rev. Stat. § 3046.

deemed the value thereof, so as to make the stock issued in payment therefor at such arbitrary value, full paid stock as above defined; and wherever stock has been heretofore issued by corporations in payment for mines purchased by it, such stock so issued shall be deemed full paid stock regardless of the actual value of the mine at the time of such purchase." ¹⁹

"Any corporation existing under any law of this State may issue stock for labor done or personal property or real estate or leases thereof; in the absence of fraud in the transaction, the judgment of the Directors as to the value of such labor, property, real estate or leases shall be conclusive. All stock so sold or so issued shall be fully paid and not liable to any further call or assessment (and this shall be so stated on the face of the certificate). But it shall be the duty of the corporation to have its minutes or other permanent records to show, with reasonable detail, the items and character of property (and of the labor or services) for which any stock or bonds were so issued." ²⁰

"No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock." ²¹

"In no case shall stock be sold or disposed of at less than par, except by a vote of three-fourths of all the stock of the corporation outstanding at the time the vote is taken, and not then until notice of the intention to present a resolution or motion authorizing the sale of stock below par at a stockholders' meeting shall first be published for at least two successive weeks in some newspaper of general circulation, published in the county wherein the principal office of such corporation may be, or if such principal office is not in this state then in some newspaper of general circulation published at the capital of this state. But nothing herein contained shall

¹⁹ Mont. *ubi supra*.

²⁰ Nev. 1903, ch. 121, §§ 54, 55.

²¹ Mass. Rev. L. ch. 110, § 44; Miss. Ann. Code, § 850; Mo. Rev. Stat. § 1323; N. Dak. Civ. Code, § 2878.

be so construed as to prevent any mining or manufacturing corporation, subject to the provisions of this chapter, from issuing stock or bonds, and negotiating the sale of the same, in payment of real and personal estate for the use of such corporation, and for its other corporate purposes and business, at such price and upon such terms and conditions as may be agreed upon by the owners and directors or stockholders of such corporation. And any subscriber to the capital stock of any such mining or manufacturing corporation may pay for the same by the transfer and conveyance to such corporation of real or personal property, or both, proper or necessary for the uses and purposes of the corporation, upon such terms as may be mutually agreed upon. All stock so issued shall be fully paid and not liable to any further call or assessment, and in the absence of actual fraud in the transaction the valuation of the property so purchased shall be conclusive; but it shall be the duty of the corporation to have its minutes or other permanent records to show with reasonable detail the items of the property in payment for which stock or bonds were so issued.”²²

Stock may be issued for property, services or other thing of value, and the judgment of the board of directors or of the stockholders entered of record is conclusive in the absence of fraud.²³

§ 343. Payment for bonds.

The same provision which is usually made as to the issue of stock applies also to bonds; no bonds shall be issued except for money, labor done, or property actually received,²⁴ and all fictitious increase of bonded indebtedness is void.²⁵ The

²² W. Va. Code, ch. 53, § 24, as amended 1901, ch. 35.

²³ Spring Garden Bank v. Hulings Lumber Co., 32 W. Va. 357, 9 S. E. 243; Richardson v. Graham, 45 W. Va. 134, 30 S. E. 92.

²⁴ *Ante*, § 342.

²⁵ Ala. Const. Art. 234; Cal. Const. Art. 12, § 11, Civ. Code, § 359; Ida. Const. Art. 11, § 9; Mo. Rev. Stat. § 962; Mont. Const. Art. 15, § 10; N. Dak.

bonded indebtedness shall not be increased "except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law."²⁶

In Missouri "the bonded indebtedness of a corporation shall not be increased so that the entire amount thereof shall exceed the amount of the authorized capital, except that any railroad company may issue its bonds in excess of its capital stock for the purpose of constructing or acquiring another railroad, which shall connect with the railroad of the company issuing such bonds, but the bonds so issued in excess of its capital stock shall not exceed the authorized capital stock of the company whose road is constructed or acquired with the proceeds thereof, and shall be secured by mortgage on the railroad franchises and property constructed or acquired with the proceeds thereof, or by the deposit as collateral security of the first mortgage bonds of the railroad constructed or acquired with the proceeds thereof. But no such bonds shall be issued without first obtaining the consent of the persons holding the larger amount in value of the stock of the company issuing the same, at a meeting called for that purpose, and of which meeting and the object and purpose thereof sixty days' public notice shall be given by advertisement in a daily or weekly newspaper published in the town or city in this state where the general offices of the company issuing such bonds may be located."²⁷ In California: "Any two or more corporations may by a separate compliance by each corporation with the provisions of this section applicable in the premises in respect to creating or increasing bonded indebtedness, create or increase a consolidated bonded indebtedness of such corporations, to be binding jointly and severally on such cor-

Const. § 138; Pa. Const. Art. 16, § 7; S. Car. Const. Art. 9, § 10; S. Dak. Const. Art. 17, § 8.

²⁶ Ala. (30 days' notice), Cal., Mo., N. Dak., Pa., S. Dak., *ubi supra*.

²⁷ Mo. *ubi supra*.

porations, and which may be secured by a consolidated mortgage or deed of trust executed by all such corporations, mortgaging or conveying in trust all or any of the properties of all such corporations, acquired or to be acquired.”²⁸

§ 344. Increase of stock.

It is likewise commonly provided that “the stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least sixty days’ notice given in pursuance of law.”²⁹ By statute in California the consent must be that of two-thirds of the stock,³⁰ and this statute is commonly followed in the far west.

§ 345. Preferred stock: provisions of various States.

In most States a corporation is expressly permitted by statute to issue preferred stock. The issue of preferred stock involves or may involve two things: a promise to pay dividends on such stock before paying them on common stock, when the profits authorize the payment of any dividends; and a guaranty that a certain percentage of profit will be earned or paid. Either or both these agreements may be made by the corporation issuing the preferred stock.

It must be clear that whether a corporation can issue preferred stock depends upon the law of the State of charter. The legality of such a contract must be tested by that law alone.³¹

If in any State there is no statute permitting the issue of preferred stock, the authority of a corporation to issue such

²⁸ Cal. Civ. Code, § 359.

²⁹ Ala. Const. Art. 234 (30 days’ notice); Cal. Const. Art. 12, § 11; Ida. Const. Art. 11, § 9 (30 days’ notice); Mo. Rev. Stat. § 962; Mont. Const. Art. 15, § 10 (30 days’ notice); N. Dak. Const. § 138; Pa. Const. Art. 16, § 7; S. Dak. Const. Art. 17, § 8.

³⁰ Cal. Civ. Code, § 359.

³¹ *McVity v. E. D. Albro Co.*, 90 App. Div. 109, 86 N. Y. S. 144.

stock must be regarded as doubtful. The provisions of the statutes differ so greatly that it is necessary to give them *in extenso*.

§ 346. Alabama.

No corporation shall issue preferred stock without the consent of the owners of two-thirds of the stock of said corporation.²² It may be issued with such consent, by vote at a meeting duly notified.²³

§ 347. Connecticut.

"Any specially chartered corporation, not engaged either in a trust, insurance, or banking business or in trading in bonds, notes, or other evidences of indebtedness, which has by law power to increase its capital stock, may so increase it by the issue of preferred stock, which shall be entitled to dividends of an agreed amount before any dividends are declared upon the stock already issued; and such dividends, if not paid in any one year, may be paid out of the earnings of subsequent years, if it be so provided in the vote authorizing such increase. Any specially chartered corporation, having power under [the preceding] section to issue stock preferred as to dividends, may also issue stock preferred as to assets, the holders of which shall, in case of the winding up of the corporation, be paid up to the full par value of such preferred stock, out of the net assets available for distribution to stockholders, before the holders of other stock receive anything; and, if the holders of a majority of the common stock shall so vote, the holders of such preferred stock may be given the right to exchange such preferred stock for common stock, on such terms and conditions as may be determined by said vote; but the total capital stock of the corporation shall not be increased by such exchange. No issue of preferred stock shall

²² Ala. Const. § 237.

²³ Ala. Code, § 1269.

be made unless authorized at a meeting of the stockholders warned and held for that purpose, by a vote of stockholders holding not less than two-thirds of the stock of such corporation, which vote shall determine the amount of preferred stock so to be issued, the number and value of the shares thereof, the dividends to be paid thereon, whether the same shall be cumulative or not, and the terms of the preferment as to assets, if such preferment is made." ²⁴

§ 348. Delaware.

"Every corporation shall have power to create two or more kinds of stock of such classes, with such designations, preferences and voting powers, or restriction or qualification thereof, as shall be stated and expressed in the certificate of incorporation; and the power to increase or decrease the stock, as in this Act elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the certificate thereof, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon a fixed yearly dividend, to be expressed in the certificate, not exceeding eight per centum, payable quarterly, half yearly or yearly, before any dividend shall be set apart or paid on the common stock, and such dividends may be made cumulative; and in no event shall a holder of preferred stock be personally liable for the debts of the corporation; but in case of insolvency, its debts or other liabilities shall be paid in preference to the preferred stock. Unless its original or amended charter or certificates of incorporation shall so provide, no corporation shall create preferred stock. The terms 'general stock' and 'common stock' are synonymous." ²⁵

²⁴ Conn. 1903, ch. 194, §§ 48-50.

²⁵ Del. Corp. Supp. § 13.

§ 349. *Indiana.*

Any manufacturing, mining or other company having a capital stock, which has been or which may hereafter be organized and incorporated under any law of this State, shall have the power to create and issue shares of preferred stock in such company of not more than one hundred dollars (\$100) each, the aggregate amount of which shall at no time exceed double the amount of the common stock of the company.³⁶

Such stock may be provided for in the original articles or in an amendment to the articles.³⁷

Such preferred stock shall not at any time exceed double the amount of the common stock of such company actually subscribed or issued, and it shall be subject to redemption at par at such time or times, and upon such terms and conditions as shall be expressed in the certificate thereof, and the holders of such preferred stock shall be entitled to receive, and the said company shall be bound to pay thereon such semi-annual sum or dividend as may be expressed in the certificates, not exceeding four per centum, before any dividend shall be set aside or paid on the common stock of such company, and in no event shall the holders of such preferred stock be individually or personally liable for the debts, or other liabilities of such company, but in case of insolvency, or upon the dissolution of such company, such debts or other liabilities shall be paid in preference to such preferred stock. Such preferred stock, however, shall at all times have priority in payment out of the assets of such company over the common stock thereof, for the full face value, together with all arrearages, interest or dividends due thereon.³⁸

Such preferred stock shall not be voted at any meeting of such company, nor shall the holders thereof, as such, have any voice in the management of the affairs of such company, excepting, however, that such company shall not have au-

³⁶ Ind. Rev. Stat. § 5064.

³⁷ *Ibid.* §§ 5065, 5066.

³⁸ *Ibid.* § 5067.

thority to convey its real estate or mortgage any of its property without the written consent of the holders of a majority of the shares of such preferred stock; nor shall such company without consent declare any dividend upon its common stock that will impair its capital. Such preferred stock shall not entitle the holders thereof to any interest in the assets of such company beyond the par or face value of such preferred stock, together with all arrearages of interest or dividends due thereon.³⁹

When any such company has redeemed the preferred stock issued by it under the provisions of this Act its directors shall within thirty days thereafter cause to be filed with the Secretary of State their certificate in writing, as directors of such company duly acknowledged, certifying that such preferred stock has been redeemed; and in default thereof the directors of such company shall be jointly and severally liable for all debts and liabilities of such company contracted after said thirty days and before said certificate is filed.⁴⁰

§ 350. Kansas.

Preferred stock may be issued by any corporation now or hereafter organized, provided all the stockholders consent.⁴¹

§ 351. Kentucky.

Any corporation, organized under this law, may divide its share into classes, such as preferred, common and deferred shares, or as may be otherwise designated, and it may give to each of the several classes such priority of right in the payment of the dividends, and in the redemption of the shares, as may be prescribed in the rules and regulations adopted by the shareholders. But no preferred stock shall be issued except for cash or its equivalent, nor for less than the par value of the shares; and the holders thereof shall be entitled to re-

³⁹ *Ibid.* § 5068.

⁴⁰ *Ibid.* § 5069.

⁴¹ Kan. Stat. ch. 66, § 104.

ceive quarterly, semi-annual or annual dividends thereon at such rate as may be prescribed in its issue, payable before any dividends shall be declared on the common stock, which shall be stated in the certificates representing the preferred and common stock respectively. On the dissolution of the company, voluntarily or otherwise, the holders of the preferred stock shall be entitled to have their shares redeemed at par before any distribution of any part of the assets of the company shall be made to the holders of common stock.⁴²

§ 352. Maine.

Every corporation of this State shall have power to create two or more kinds of stock with such classes, and with such designations, preferences and voting powers, or restrictions or qualification thereof, as shall be fixed and determined in the by-laws, or by vote of the stockholders at a meeting duly called for the purpose.⁴³

§ 353. Maryland.

By vote of the stockholders any corporation authorized to issue bonds may instead of bonds issue preferred stock to the same amount, and guarantee a perpetual dividend of six per cent. per annum out of the profits before any dividend is paid to the common stock; and such stock shall have all the incidents, rights, privileges, immunities and liabilities of the common stock. The preferred stock shall constitute a lien on the franchises and property of the corporation, and have priority over any subsequently created mortgage or other incumbrance.⁴⁴

§ 354. Massachusetts.

Every corporation may create two or more classes of stock with such preferences, voting powers, restrictions and qualifi-

⁴² Ky. Stat. § 564.

⁴³ Me. Rev. Stat. ch. 47, § 49.

⁴⁴ Md. Gen. L. Art. 23, § 294.

cations thereof as shall be fixed in the agreement of association or, in the case of a corporation created by special law, in the articles of organization, or in an amendment to said agreement or articles which may be adopted as hereinafter provided.⁴⁵

Every corporation organized under the laws of this Commonwealth shall have power to issue preferred stock to an amount not exceeding at any time the amount of the general stock then outstanding, with such preferences and voting powers or restrictions or qualifications thereof as shall be fixed and determined in the by-laws at the organization of the corporation; or after organization, by a two-thirds vote of all the stock, or by a by-law adopted by a two-thirds vote of all the stock, at a meeting duly called for the purpose. Such stock shall be issued subject to all general laws of the Commonwealth governing the issue of capital stock; and each certificate subsequently issued of stock in the corporation shall have fully and plainly printed thereon the by-law or vote of the corporation authorizing the issue of preferred stock.⁴⁶

§ 355. Michigan.

Any such company shall have power to create and issue certificates for two kinds of stock, viz.: General or common stock, and preferred stock, which preferred stock shall at no time exceed two-thirds of the actual capital paid in,⁴⁷ and shall be subject to redemption at par at a certain time to be fixed by the by-laws of said corporation, and to be expressed in the certificates therefor. And the holder of such preferred stock shall be entitled to a fixed dividend, payable quarterly, half-yearly or yearly, which said dividend shall be cumulative, payable at the time expressed in said certificate, not to exceed

⁴⁵ Mass. 1903, ch. 437, § 27 (of business corporations).

⁴⁶ Mass. 1902, ch. 441, §§ 1, 2.

⁴⁷ "We think that the law means that no preferred stock can be authorized beyond two-thirds of the amount of capital actually paid in at the time of authorizing the issue." *Continental Varnish & Paint Co. v. Secretary of State*, 128 Mich. 621, 87 N. W. 901.

eight per cent. per annum, before any dividend shall be set apart or paid on the common stock. In no event shall the holder of such preferred stock be individually or personally liable for the debts or other liabilities of said corporation, excepting debts for labor. Said corporation shall be controlled by a board of directors elected by the preferred and common stockholders, excepting when otherwise provided in the articles of association or amendments thereto: *Provided* always, If at any time upon a fair valuation of the assets of the corporation the common stock shall be impaired in an amount equal to ten per cent. thereof or any dividend due on the preferred stock shall remain unpaid for sixty days then holders of the preferred stock shall have an equal right with the common stock share and share alike to participate in the election of directors and control of said corporation. If for any reason said corporation shall cease business or become insolvent then after the payment of all liabilities and debts the remainder of the assets of said corporation shall be applied first in payment in full of all preferred stock and then unpaid dividends due thereon, and the balance divided *pro rata*, share and share alike among the holders of the common stock. Every corporation organized or existing under the provisions of this act may by a vote of three-fourths in interest of its capital stock amend its articles of association providing for the issue of preferred and common stock, in accordance with this section, in the same manner and with the same effect as is now provided by section seventeen of this act, relating to amending articles of association.⁴⁸

§ 356. Minnesota.

Any corporation by its articles of incorporation or by vote of directors authorized by a majority of its stockholders may create special or preferred stock or both and give such stock such preference as it may deem best.⁴⁹

⁴⁸ Mich. 1903, Act 232, § 35.

⁴⁹ Minn. Gen. Stat. § 3415.

§ 357. Missouri.

"No corporation shall issue preferred stock without the consent of all the stockholders."⁵⁰

Whenever any corporation shall desire to call a meeting of its stockholders for the purpose of increasing the amount of its capital stock, and the directors thereof shall deem it advisable for the best interests of said company to submit, at the time and place of said meeting, to the stockholders, whether any part of said stock so proposed to be increased shall be preferred, and the amount, number of shares, the price per share, in case an increase shall be determined, and also the priorities, preferences and character thereof, and the different classes of preferred stock, if any, and in case additional notice to such effect shall have been given for the time as required by this article, for the purpose of increasing said capital stock, then, if on canvassing the votes of the said stockholders, as required by this article, it shall appear that all the stock of said company shall have been cast for the increase of its stock, and that all the stockholders have voted that any part of the said increased stock shall be preferred, the said stockholders shall also, at said time and place, by like vote, determine the character, amount, the number of shares, and the price per share of said increase, and what rate of dividend, not exceeding eight per cent. per annum shall be paid on said preferred stock out of the net earnings, and whether such dividends shall be cumulative or not, and what priority, if any, any class of such preferred stock shall have over the common stock or other preferred stock out of the assets of the corporation in case of its dissolution or liquidation. The statement required by section 1329 of this article, in case said capital stock shall be increased in the manner provided in the foregoing section, shall also set forth the amount and number of shares, the price per share of such preferred stock and the preferences, priorities, classification

⁵⁰ Mo. Const. Art. 12, § 10.

and character thereof, and also the rate of dividend to be paid thereon.⁵¹

§ 358. Nevada.

Every corporation organized under this Act shall have power to create two or more kinds of stock, of such classes, with such designations, preferences and voting powers or restrictions or qualifications thereof as shall be stated and expressed in the certificate or articles of incorporation or in any amendment or certificate of amendment thereof; and the power to increase or decrease the stock as in this Act elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stocks issued and outstanding exceed two-thirds of the capital stock paid for in cash or property, and such preferred stocks may, if desired, be made subject to redemption at any time after three years from the issue thereof, at a price not less than par, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon (but only out of the profits or property of said corporation) dividends at such rates and on such conditions as shall be stated in the original or amended certificate of incorporation, not exceeding ten per centum per annum, payable quarterly, half yearly or yearly; and such dividends may be made payable before any dividends shall be set apart or paid on the common stock, and such dividends may be made cumulative; *provided*, the corporation shall set apart or pay the said dividends to the holders of non-cumulative preferred stock before any dividend shall be paid on the common stock; and in no event shall a holder of any class of stock be personally liable for the debts of the corporation nor for the payment of dividends; but in case of insolvency its debts and other liabilities shall be paid in preference to the preferred stock; the terms "general stock" and "common stock" are synonymous.⁵²

⁵¹ Mo. Rev. Stat. §§ 1332, 1333.

⁵² Nev. 1903, ch. 121, § 10.

§ 359. New Hampshire.

A corporation may divide its capital stock into different classes of shares, giving such preferences in relation to dividends to any class as it sees fit; but the duties and liabilities of its stockholders to creditors of the corporation and to the State shall not be affected thereby. No corporation shall sell or dispose of any of the shares of its capital stock at a price less than the par value thereof, except in sales of shares at auction for nonpayment of assessments.⁵³

§ 360. New Jersey.

Every corporation organized under this act shall have power to create two or more kinds of stock, of such classes, with such designations, preferences and voting powers or restrictions or qualifications thereof as shall be stated and expressed in the certificate of incorporation or in any certificate of amendment thereof; and the power to increase or decrease the stock as in this act elsewhere provided shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stocks issued and outstanding exceed two-thirds of the capital stock paid for in cash or property, and such preferred stocks may, if desired, be made subject to redemption at any time after three years from the issue thereof, at a price not less than par, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, dividends at such rates and on such conditions as shall be stated in the original or amended certificate of incorporation, not exceeding eight per centum per annum, payable quarterly, half yearly or yearly; and such dividends may be made payable before any dividends shall be set apart or paid on the common stock, and such dividends may be made cumulative; *provided*, the corporation shall set apart or pay the said dividends to the holders of non-cumulative preferred stock before any dividend shall be paid on the common stock; and in no event shall a holder of preferred stock be personally liable for the

⁵³ N. H. Pub. Stat. ch. 149, §§ 8, 9.

debts of the corporation; but in case of insolvency its debts or other liabilities shall be paid in preference to the preferred stock; the terms "general stock" and "common stock" are synonymous.⁵⁴

§ 361. New York.

Every domestic stock corporation may issue preferred stock and common stock, and different classes of preferred stock, if the certificate of incorporation so provides, or by the consent of the holders of record of two-thirds of the capital stock given at a meeting called for that purpose. . . . The corporation may, upon the written request of the holders of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock therefor, upon such valuation as may have been agreed upon in the certificate of organization of such corporation or the issue of such preferred stock, or share for share; but the total amount of such capital stock shall not be increased thereby.⁵⁵

§ 362. North Carolina.

Every corporation shall have power to create two or more kinds of stock of such classes, with such designations, preferences, and voting powers or restriction or qualification thereof as shall be stated and expressed in the certificate of incorporation; and the power to increase or decrease the stock, as in this act elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed one-half the actual capital paid in cash or property; and such preferred stock may, if desired, be subject to redemption at not less than par, at a fixed time and price, to be expressed in the certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, to be expressed in the certificate, payable quarterly, half yearly, or

⁵⁴ N. J. Corp. Supp. § 18.

⁵⁵ N. Y. Stock Corp. L. § 47, as amended 1901, ch. 354.

yearly, before any dividend shall be set apart or paid on the common stock, and such dividends may be made cumulative; and in case of insolvency, its debts or other liabilities shall be paid in preference to the preferred stock; no corporation shall create preferred stock, except by authority given to the board of directors, by a vote of at least two-thirds of the stock voted at a meeting of the common stockholders, duly called for that purpose; the terms "general stock" and "common stock" are synonymous; when any corporation shall issue stock for labor done or personal property or real estate, or leases thereof, in the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive.⁵⁶

§ 363. Ohio.

A corporation on the assent in writing of three-fourths in number of the stockholders representing at least three-fourths of the capital stock may issue preferred stock, to receive dividends not exceeding six per cent. per annum in preference to other stockholders, and convertible into common stock, at their election.⁵⁷

§ 364. Pennsylvania.

Preferred stock may be issued by a majority vote of the stockholders at a meeting called for the purpose, not exceeding one-half the capital stock; the holders shall be entitled to preference in dividends out of the profits, not exceeding twelve per cent. per annum.⁵⁸ This stock may be issued in classes.⁵⁹

§ 365. Rhode Island.

The promoters in their certificate may state the amount of the capital stock, and whether common or preferred, and

⁵⁶ N. Car. 1901, ch. 2, § 19.

⁵⁷ Oh. Rev. Stat. § 3263.

⁵⁸ Pa. 1872, P. L. 37, § 1; 1874, P. L. 73, § 16.

⁵⁹ Pa. 1873, P. L. 79, § 1.

how much of each, and the par value of each share, and, if preferred, the advantages thereof over the common stock.⁶⁰

§ 366. South Carolina.

Preferred stock may be issued if provided for at the organization of the corporation, or afterwards by a two-thirds stock vote.⁶¹

§ 367. Virginia.

Every corporation shall have power to create two or more kinds of stock, of such classes, with such designations, preferences, and voting powers, or restrictions or qualifications thereof, as shall be stated and expressed in the charter, certificate of incorporation, or articles of association, or in any amendment thereof; and the power to increase or decrease the stock, as in this act elsewhere provided, shall apply to all or any of the classes of stock. Any preferred stock that may be issued may, if desired, be made subject to redemption at any time after three years from the issue thereof at a price not less than par, and the holders thereof shall be entitled to receive and the corporation bound to pay thereon dividends at such rates and on such conditions as shall be stated in its charter, or any amendment thereof, or in the original or amended certificate of incorporation, or articles of association, or in an amendment thereof; and such dividends may be made payable before any dividends shall be set apart or paid on the common stock, and such dividends may be made cumulative.⁶²

§ 368. West Virginia.

The stockholders at a meeting duly notified may provide for issuing preferred stock, provided that the maximum capital shall not be exceeded. They may make such regulations as

⁶⁰ R. I. Gen. L. ch. 176, § 3.

⁶¹ S. Car. 1901, No. 401.

⁶² Va. Corp. Supp. ch. 5, § 13.

they deem proper respecting the preference over common stock in the matter of dividends or otherwise.⁶³

§ 369. Wisconsin.

Corporations now existing or hereafter organized may issue preferred stock if all stockholders consent. This may secure preference in payment of dividends at a specified rate, but shall not give preference in distribution of the assets, nor shall dividends be paid on it except from profits.⁶⁴

§ 370. Wyoming.

A corporation may issue preferred stock by the unanimous assent of the stockholders. It may stipulate that the holders of such stock shall be entitled to dividends not exceeding seven per cent. per annum in preference to all other stockholders; provided that if the earnings of the corporation available for dividends are more than seven per cent., all the stock shall participate equally in dividends.⁶⁵ Any corporation may provide in its certificate of incorporation for such stock.⁶⁶ Whenever preferred stock is issued the holder of common stock shall have the first opportunity to purchase it, in proportion to their holdings of common stock.⁶⁷

§ 371. Conversion of one kind of security into another.

Provisions are made in several States for the conversion of one form of security into another. In Missouri and New Jersey bonds may be converted into common stock, by vote of the stockholders,⁶⁸ or by provision in the bonds themselves.⁶⁹ In Ohio money may be borrowed with the agreement that the creditors may have the right to convert it into

⁶³ W. Va. Code, ch. 53, § 16.

⁶⁴ Wis. Rev. Stat. § 1759a.

⁶⁵ Wyo. Rev. Stat. § 3041.

⁶⁶ *Ibid.* § 3042.

⁶⁷ *Ibid.* § 3043.

⁶⁸ Mo. Rev. Stat. § 1337; See Ky. 1904, ch. 105, § 2.

⁶⁹ N. J. 1902, P. L. p. 217.

common or preferred stock.⁷⁰ In Nevada preferred stock may be converted into bonds,⁷¹ and in New Jersey it may be retired by an issue of bonds.⁷²

§ 372. Corporation owning its own stock.

A corporation, having power to acquire personal property, may at common law own its own stock.⁷³ In a few States statutory provisions are made, permitting or forbidding such ownership.⁷⁴ In West Virginia is a provision which through purchase by a corporation of its own stock might lead to a reduction of capital without a formal vote to that effect. "If the corporation acquire shares of its own stock it may either extinguish or sell the same. If extinguished it shall operate to that extent as a reduction of the amount of its capital stock."⁷⁵

No corporation shall directly or indirectly vote upon any share of its own stock.⁷⁶

§ 373. Holding stock and bonds of other corporations.

While in general a corporation, having power to take and hold personal property, would have the right to own the stock or bonds of another corporation, the common law or the ordinary anti-trust statutes might often make the exercise of such power of doubtful legality.⁷⁷ Elaborate statutory provisions have been made in a few States to settle the question.

The Connecticut statute is as follows: "Any corporation not prohibited by any provision in its charter, articles of associa-

⁷⁰ Oh. Rev. Stat. § 3257.

⁷¹ Nev. 1903, ch. 121, § 36; See Ky. 1904, ch. 105, § 2.

⁷² N. J. 1902, P. L. p. 217.

⁷³ *Berger v. United States Steel Corp.*, 63 N. J. Eq. 809, 53 Atl. 68.

⁷⁴ See Del. Corp. Supp. § 36; N. Dak. Civ. Code, § 2880; Okla. Stat. § 959; S. Dak. Code, §§ 425, 463, 464.

⁷⁵ W. Va. Code, ch. 53, § 18, as amended 1901, ch. 35.

⁷⁶ Del. Corp. Supp. § 19; Mass. 1903, ch. 437, § 23; Mo. Rev. Stat. § 950; N. J. Corp. Supp. § 38; N. Car. 1901, ch. 2, § 43; Va. Corp. Supp. ch. 5, § 23; W. Va. Code, ch. 53, § 18; 1901, ch. 35.

⁷⁷ *United States v. Northern Securities Co.*, 193 U. S. 197.

tion, or certificate of incorporation or by any general law, except a bank, trust company, or life insurance company, may acquire, purchase, and hold the stock or securities of any other corporation. Any such corporation, except a bank, trust company, or life insurance company, may acquire, purchase and hold its own stock. No corporation shall acquire, purchase, and hold its own stock unless to prevent loss upon a debt previously contracted, except with the approval of stockholders owning three-fourths of its entire outstanding capital stock given at a stockholders' meeting warned and held for the purpose; and such corporation shall not vote upon shares of its own stock. No corporation shall purchase any of its own stock when it is insolvent, or by such purchase render itself immediately insolvent. If any corporation shall purchase its own stock when it is insolvent, or so render itself immediately insolvent, the directors assenting to such purchase shall be personally liable for any debts of such corporation existing at the time of such purchase."⁷⁸

In New Jersey it is provided that "corporations having for their object the building, construction or repairing of railroads, water, gas or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers or any like works of internal improvement or public use or utility, may subscribe for, take, pay for, hold, use and dispose of stock or bonds in any corporations formed for the purpose of constructing, maintaining and operating any such public works; and the directors of any such corporation formed for the purpose of constructing, maintaining and operating any public work of the description aforesaid may accept in payment of any such subscription, or purchase, real or personal property, necessary for the purposes of such corporation, or work, labor and services performed or materials furnished to or for such corporation to the amount of the value thereof, and from time to time issue upon any such subscription or purchase, in such installments or proportions as such directors may agree upon, full-paid

⁷⁸ Conn. 1903, ch. 194, § 11.

stock in full or partial performance of the whole or any part of such subscription or purchase, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payments, and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.”⁷⁹

The New York statutes are as follows:

“Any stock corporation, domestic or foreign, now existing or hereafter organized, except moneyed corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations if authorized so to do by a provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law, or if the corporation whose stock is so purchased, acquired, held or disposed of is engaged in a business similar to that of such stock corporation, or engaged in the manufacture, use or sale of the property or in the construction or operation of works necessary or useful in the business of such stock corporation, or in which or in connection with which the manufactured articles, product or property of such stock corporation are or may be used, or is a corporation with which such stock corporation is or may be authorized to consolidate. When any such corporation shall be a stockholder in any other corporation, as herein provided, its president or other officers shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein, and the corporation holding such stock shall possess and exercise in respect thereof all the rights, powers and privileges of individual owners or holders of such stock.”⁸⁰ “A corporation by unanimous vote of its

⁷⁹ N. J. Corp. Supp. § 50.

⁸⁰ N. Y. Stock Corp. L. § 40, as amended 1902, ch. 601. See also Me.

stockholders at a meeting duly warned may guarantee the bonds of any other domestic corporation engaged in the same general line of business; or by a two-thirds vote guarantee the bonds of a domestic corporation of the sort of which it owns all the capital stock.”⁸¹

“In West Virginia the statute provides that unless specially authorized, no corporation shall . . . subscribe for or purchase the stock, bonds or securities of any joint-stock company, or become surety or guarantor for the debt or default of such company.⁸² Nevertheless . . . any corporation may take real estate, stock, bonds and securities in payment, in whole or in part, of any debt *bona fide* owing to it, or as a security therefor, or may purchase the same if deemed necessary to secure or obtain payment of any such debt, in whole or in part, and may manage, use and dispose of what has been so taken or purchased as a natural person might do; and any corporation may compromise or purchase its own debt, and establish and manage a sinking fund for that purpose.”⁸³

§ 374. Voting-trust.

“A stockholder may, by agreement in writing, transfer his stock to any person or persons for the purpose of vesting in him or them the right to vote thereon for a time not exceeding five years upon terms and conditions stated, pursuant to which such person or persons shall act; every other stockholder, upon his request therefor may, by a like agreement in writing also transfer his stock to the same person or persons and thereupon may participate in the terms, conditions and privileges of such agreement; the certificates of stock so transferred shall be surrendered and canceled and certificates therefor issued to such transferee or transferees in which it shall appear

Rev. Stat. ch. 47, § 51; N. J. Corp. Supp. § 51; Pa. 1901, Act No. 298; *infra*, § 734.

⁸¹ N. Y. 1902, ch. 601.

⁸² W. Va. Code, ch. 52, § 3.

⁸³ *Ibid.* § 4.

that they are issued pursuant to such agreement and in the entry of such transferee or transferees as owners of such stock in the proper books of said corporation that fact shall also be noted and thereupon he or they may vote upon the stock so transferred during the time in such agreement specified; a duplicate of every such agreement shall be filed in the office of the corporation where its principal business is transacted and be open to the inspection of any stockholder, daily, during business hours."⁸⁴ This provision legalizes the voting trust, but as will be noticed for five years only. An agreement for such a trust in a foreign corporation, which provides for an irrevocable power of attorney, will not be specifically enforced in New York, and is probably against public policy.⁸⁵

§ 375. Stock owned by a married woman.

It is provided in several States that "shares of stock in corporations held or owned by a married woman may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a *feme sole*. All dividends payable upon any shares of stock of a corporation held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman, touching any shares of stock of any corporation owned by her, is valid and binding without the signature of her husband, the same as if she were unmarried."⁸⁶

§ 376. Attachment of corporate stock.

The interest of the stockholder in a corporation is double.

⁸⁴ N. Y. Gen. Corp. L. § 20, as amended 1901, ch. 355.

⁸⁵ Sullivan v. Parkes, 69 App. Div. 221, 74 N. Y. S. 787.

⁸⁶ Cal. Civ. Code, § 325; Ida. Rev. Stat. § 2123; Mont. Civ. Code, § 473; Okla. Stat. § 953; S. Dak. Code, § 417. The law of the charter governs the right of the married woman to receive dividends, irrespective of the law of her domicile: *Graham v. First National Bank*, 84 N. Y. 393.

He has in the first place membership in the corporation, with all the rights that come from being registered as a stockholder on its books. This interest is property which can be affected only through the corporation itself, by a transfer of ownership on the books. It can be affected, therefore, only where the corporation can be reached; and since membership in the corporation has to do with its internal affairs, no court will interfere with it except the court of the State of charter.⁸⁷ It follows that this interest of the stockholder can be attached only in the State of charter;⁸⁸ and that it is impossible to attach the stockholder's interest in a foreign corporation,⁸⁹ even though the corporation is within the jurisdiction of the court.⁹⁰ For the same reason shares in a foreign corporation are not subject to garnishment, and statutes providing for garnishment of a stockholder's interest must be interpreted as applying only to domestic corporations.⁹¹

The stockholder, however, has another interest besides his relation to the corporation. His certificate of stock is by mercantile custom itself a document of value, and may be reached by a court which has control of it, though it has no control over the corporation itself. What effect a sale on execution would have upon membership in the corporation is a different question. If the certificate has been indorsed

⁸⁷ *Ante*, § 307.

⁸⁸ It may be attached there; *Masury v. Arkansas Nat. Bank*, 87 Fed. 381; *Young v. South T. I. Co.*, 85 Tenn. 189, 4 A. S. R. 752.

⁸⁹ Del. Corp. Supp. § 130; Ind. Rev. Stat. § 735.

⁹⁰ *Smith v. Downey*, 8 Ind. App. 179; *New Jersey S. & W. Co. v. Traders' Deposit Bank*, 20 Ky. L. Rep. 565, 46 S. W. 677; *Caffery v. Choctaw C. & M. Co.*, 95 Mo. App. 174, 68 S. W. 1049; *Plimpton v. Bigelow*, 93 N. Y. 592; *Greenwood v. Hat-Sweat Mfg. Co.*, 13 W. N. (Pa.) C. 447; *Ireland v. Globe M. & R. Co.*, 19 R. I. 180, 32 Atl. 921, 61 A. S. R. 756, 29 L. R. A. 429. *Contra* as to shares in resident foreign corporation; *Smith v. Pilot Min. Co.*, 67 Mo. App. 409.

⁹¹ *Pinney v. Nevills*, 86 Fed. 97; *Armour Bros. Banking Co. v. St. Louis Nat. Bank*, 113 Mo. 12, 20 S. W. 690; *Simpson v. Jersey C. C. Co.*, 47 App. Div. 17, 61 N. Y. S. 1033.

in blank by the owner, or is accompanied by such *indicia* of title that a transferee could take, and has been deposited with a resident bailee, the certificate may be reached by garnishment.⁹²

⁹² *Simpson v. Jersey C. C. Co.*, 47 App. Div. 17, 61 N. Y. S. 1033.

CHAPTER XVII

STATUTORY LIABILITY OF STOCKHOLDERS AND DIRECTORS.

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399. Maine.	426. Virginia.
400. Maryland.	427. Washington.
401. Massachusetts.	428. West Virginia.
402. Michigan.	429. Wisconsin.
403. Minnesota.	430. Wyoming.
404. Mississippi.	431. England.
405. Missouri.	432. Canada, New Brunswick,
406. Montana.	Ontario.
407. Nebraska.	433. Nova Scotia.

§ 381. Alabama.

There are no statutory provisions regarding the liability of stockholders. Directors who depreciate by any means the market value of the corporate stock or bonds for the purpose of buying them are guilty of a misdemeanor, and are liable

to persons who sell them such stock or bonds for the difference between the real value and the price paid.¹

§ 382. Arizona.

"Nothing herein shall exempt the stockholders of any corporation from individual liability to the amount of the unpaid installment on the stock owned by them, or transferred to them for the purpose of defrauding creditors, and an execution against the corporation to that extent may be levied upon the private property of such individual."²

§ 383. Arkansas.

"If the president or secretary of any such corporation shall neglect or refuse to comply with the provisions of section 1337³ and to perform the duties required of them respectively, the persons so neglecting or refusing shall jointly and severally be liable to an action founded on this statute for all debts of such corporation contracted during the period of any such neglect or refusal."⁴

"If the capital stock of any such corporation be withdrawn and refunded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to them respectively, as aforesaid; but if any stockholder shall be compelled, by any such action, to pay the debts of any creditor, or any part thereof, he shall have the right, by bill in equity, to call upon all the stockholders to whom any part of said stock has been refunded to contribute their proportional part of the sum paid by him as aforesaid."⁵

¹ Ala. Code, § 1279.

² Ari. Rev. Stat. § 776.

³ Requiring annual statements of conditions.

⁴ Ark. Stat. § 1347.

⁵ *Ibid.* § 1348.

"If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, knowing such corporation to be insolvent, or that such dividend would render it so, the directors assenting thereunto shall be jointly and severally liable, in an action founded on this statute, for all debts due from such corporation at the time of such dividend. If the president, directors, or secretary of any such corporation shall intentionally neglect or refuse to comply with the provisions of this act, and to perform the duties therein required of them respectively, such of them as so neglect or refuse shall be jointly and severally liable, in an action founded on this statute, for all the debts of such corporation contracted during the period of any such neglect or refusal. If any corporation, organized and established under the authority of this act, shall violate any of its provisions, and shall thereby become insolvent, the directors ordering or assenting to such violation shall be jointly and severally liable, in an action founded on this statute, for all debts contracted after such violation as aforesaid." ⁶

§ 384. California.

"Each stockholder of a corporation or joint-stock association shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association." ⁷

"Each stockholder of a corporation is individually and personally liable for such portions of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute

⁶ *Ibid.* §§ 1349-1351.

⁷ Cal. Const. Art. 12, § 3.

joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt, due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it shall be dismissed, as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian, or trustee, shall not be liable under the provisions of this section, by reason of any such investment; nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person or estate represented, is to be deemed the stockholder, as respects such liability. The liability of each

stockholder of a corporation formed under the laws of any other State or Territory of the United States, or of any foreign country, and doing business within this State, shall be the same as the liability of a stockholder of a corporation created under the Constitution and laws of this State.⁸

"The directors of any corporation formed or existing under the laws of this State, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent provided herein. No one assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

"1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount; 2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided; 3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper. No assessment must be levied while any portion of a previous one remains unpaid, unless:

"1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment; 2. The collection of the previous assessment has been enjoined; or, 3. The assessment falls within the provisions of either the first, second, or third subdivision of section three hundred and thirty-two."⁹

"The directors or trustees of corporations and joint-stock

⁸ Cal. Civ. Code, § 322.

⁹ *Ibid.* §§ 331-333.

associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association during the term of office of such director or trustee." ¹⁰

"Any contract or contracts, verbal or written, hereafter made whereby it is sought directly or indirectly to relieve any director or trustee of any corporation or joint-stock association from any liability imposed [by this section] are hereby declared to be and shall be null and void." ¹¹

"The directors of corporations must not make dividends except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock, except as hereinafter provided, or reduce or increase the capital stock, except as herein specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen), are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are liable by this section; *provided, however*, that where a corporation has been heretofore or may hereafter be formed for the purpose, among other things, of acquiring, holding, and selling real estate, water, and water rights, the directors of such corporation may, with the consent of stockholders representing two-thirds of the capital stock thereof, given at a meeting

¹⁰ Cal. Const. Art. 12, § 3.

¹¹ Cal. Civ. Code, § 327.

called for that purpose, divide among the stockholders the land, water, or water rights so by such corporation held, in the proportions to which their holdings of such stock at the time of such division would entitle them. All conveyances made by the corporation in pursuance of this section shall be made and received subject to the debts of such corporation existing at the date of the conveyance thereof. Nothing herein shall prohibit a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution, or the expiration of its term of existence."¹²

No amendment of charter or dissolution of a corporation shall take away, or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.¹³

"Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor."¹⁴

"Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence, to any public officer or board authorized by the law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in

¹² *Ibid.* § 309.

¹³ *Ibid.* § 384.

¹⁴ Cal. Pen. Code, § 557.

the State prison not less than three nor more than ten years." ¹⁵

"Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement or announcement of any corporation or joint-stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor." ¹⁶

"Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended either: 1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or, 2. To divide, withdraw, or in any manner except as provided by law pay to the stockholders, or any of them, any part of the capital stock of the corporation; or, 3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment, or 4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or, 5. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation, is guilty of a misdemeanor." ¹⁷

"Every director, officer, or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association,

¹⁵ *Ibid.* § 558.

¹⁶ *Ibid.* § 559.

¹⁷ *Ibid.* § 560.

otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent, or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes, or concurs in making, any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the State prison not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment." ¹⁸

"Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this chapter, is guilty of a felony." ¹⁹

"Every officer or agent of any corporation, having or keeping an office within this State, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor." ²⁰

"Every officer, agent, or stockholder of any railroad company, who knowingly assents to, or has any agency in con-

¹⁸ *Ibid.* § 563.

¹⁹ *Ibid.* § 564.

²⁰ *Ibid.* § 565.

tracting any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its *bona fide* and available stock subscriptions, and exclusive of its real estate, is guilty of a misdemeanor.²¹ The last section does not affect the validity of a debt created in violation of its provisions, as against the company.”²²

“Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter. Every director of a corporation or joint-stock association, who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.”²³

“It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another State, government or country, if it was

²¹ *Ibid.* § 566.

²² *Ibid.* § 567.

²³ *Ibid.* §§ 568-570.

one carrying on business or keeping an office therefor within this State." ²⁴

§ 385. Colorado.

"Each stockholder shall be liable for the debts of the corporation to the extent of the amount that may be unpaid upon the stock held by him, to be collected in the manner herein provided. Whenever any action is brought to recover any indebtedness against the corporation, it shall be competent to proceed against any one or more stockholders at the same time, to the extent of the balance unpaid by such stockholders upon the stock owned by them respectively, whether called in or not, as in cases of garnishment." ²⁵

"If any corporation or its authorized agent shall do any act which shall subject it to a forfeiture of its charter or corporate powers, or shall allow any execution or decree of any court of record for a payment of money, after demand made by the officer, to be returned 'no property found,' or to remain unsatisfied for ten days after such demand, or shall dissolve or cease doing business, leaving debts unpaid, suits in equity may be brought against all persons who were stockholders at the time, or liable in any way for the debts of the corporation, by joining the corporation in such suit, and each stockholder may be required to pay such debts or liabilities to the extent of the unpaid portion of his stock; and courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, to appoint a receiver therefor, who shall have authority by the name of the receiver of such corporation (giving the name), to sue in all courts, and to do all things necessary to closing up its affairs as commanded by the decree of the court." ²⁶

"The dissolution for any cause whatever of corporations created as aforesaid shall not take away or impair any remedy

²⁴ *Ibid.* 571.

²⁵ Colo. Ann. Stat. § 486.

²⁶ *Ibid.* § 497.

given against such corporations, its stockholders, or officers, for any liabilities incurred previous to its dissolution.²⁷

"No person holding stock in any corporation as executor, administrator, conservator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such corporation, but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, conservator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust funds would have been if he had been living, and had been competent to act, and held the stock in his own name."²⁸

"The officers and stockholders of every banking corporation or association formed under the provisions of this act shall be individually liable for all debts contracted during the term of their being officers or stockholders of such corporation, equally and ratably to the extent of their respective shares of stock in any such corporation or association, except that when any stockholder shall sell and transfer his stock, such liability shall cease at the expiration of one year from and after the date of such sale and transfer."²⁹

"The stockholders collectively of any bank shall at no time be liable to such bank, either as principal, debtor or sureties, or both, to an amount greater than two-fifths of the amount of the capital stock actually paid in and remaining undiminished by losses or otherwise."³⁰

"If the directors, trustees or other officers or agents of any corporation shall declare and pay any dividend when such corporation is insolvent, or any dividend the payment of which would render it insolvent or would diminish the amount of its

²⁷ *Ibid.* § 509.

²⁸ *Ibid.* § 495.

²⁹ *Ibid.* § 518.

³⁰ *Ibid.* § 519.

capital stock, all directors, trustees, agents or officers assenting thereto shall be jointly and severally liable for all debts of such corporation then existing, and for all that shall thereafter be contracted while the capital remains so diminished.”³¹

“If any such corporation, joint stock company or association, shall fail, refuse or omit to file the annual report aforesaid, and to pay the fee prescribed therefor, within the time above prescribed, all the officers and directors of said corporation shall be jointly and severally and individually liable for all debts of such corporation, joint stock company or association that shall be contracted during the year next preceding the time when such report should by this section have been made and filed, and until such report shall be made and filed.”³²

“If any such banking association shall neglect to make out and transmit the statement required in the preceding section for one month beyond the period when the same is required to be made, or shall willfully violate any of the provisions of this act, the directors shall be personally liable for all debts of said association contracted previous to and during the period of such neglect.”³³

§ 386. Connecticut.

“Every stockholder, whether an original subscriber or not, shall be liable for any balance due on the stock held by him. If a corporation is placed in the hands of a receiver or a trustee in insolvency or bankruptcy, such receiver or trustee shall have the powers of the board of directors in calling in instalments on stock. If a creditor of a corporation shall obtain a judgment against it, and execution thereon shall be returned unsatisfied, such creditor may recover from any stockholder in such corporation the balance remaining due and unpaid on any stock held by him, so far as may be necessary to satisfy the debt. No subscriber for or holder of stock shall be liable as

³¹ *Ibid.* § 492.

³² Colo. 1901, ch. 52, § 11.

³³ Colo. Ann. Stat. § 517.

such for any payment of such stock, or for any debt of the corporation, after the par value of his stock has been paid.”³⁴

“If any stock shall be paid for otherwise than in cash, a majority of the directors shall make and sign upon the record book of the corporation a statement showing particularly of what the property received in payment for stock subscriptions consists, and that it has an actual value equal to the amount for which it is so received. The judgment of the directors as to the value of property accepted in payment of stock shall be final; but the directors concurring in the judgment of such value, in case of fraud in the over-valuation of such property, shall be jointly and severally liable to the corporation for the amount of the difference between the actual value of any property so accepted in payment at the time of such acceptance, and the amount for which it is received in payment. The secretary shall keep a record of the names of the directors concurring in such judgment of value.”³⁵

“No corporation shall pay any dividend or make any other distribution of its assets except from its net profits or actual surplus, unless in accordance with the law allowing the reduction of stock, or upon the dissolution of the corporation. The secretary shall enter the name of every director voting for any dividend, or any other distribution of the assets, upon the records of the corporations. Every director voting for a dividend or other distribution of assets in violation of this section shall be fined not more than five hundred dollars. If such payment or distribution renders a corporation insolvent, the directors so voting shall be jointly and severally liable, to the amount so paid or distributed, to any creditors existing at the date of such vote who shall obtain judgment against such corporation on which execution shall be returned unsatisfied. No such dividend shall be paid or distribution made unless duly voted by the directors of the corporation.”³⁶

³⁴ Conn. 1903, ch. 194, § 16.

³⁵ *Ibid.* § 12

³⁶ *Ibid.* § 5.

"In case the reduction of the capital stock of any corporation shall render it insolvent, at the time of such reduction, the stockholders voting in favor of such reduction shall be jointly and severally liable, to the amount of such reduction, for all debts of the corporation existing at the time of such vote, after judgment has been obtained against the corporation and execution has been returned unsatisfied. The records of the corporation shall show the name of every stockholder voting in favor of such reduction."²⁷

§ 387. Delaware.

"When the whole capital stock of a corporation shall not have been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of the par value of such share as fixed by the charter of the company or its certificate of incorporation, or such proportion of that sum as shall be required to satisfy the debts of the company, which said sum or proportion thereof may be recovered as provided for in [the following] section after a writ of execution against the corporation has been returned unsatisfied, as provided for in section 51 of this Act as amended."²⁸ When the officers, directors or stockholders of any corporation, organized under this Act, shall be liable by the provisions of this Act, to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action on the case against any one or more of them and the declaration shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally; or the person to whom they are liable may have his remedy by bill in chancery.²⁹ When any officer, director or stockholder shall pay any debt of a corpo-

²⁷ *Ibid.* § 6.

²⁸ Del. Corp. Supp. § 20.

²⁹ *Ibid.* § 49.

ration for which he is made liable by the provisions of this Act, he may recover the amount so paid, in an action against the corporation for money paid for its use, and in which action only the property of the corporation shall be liable to be taken, and not the property of any stockholder.⁴⁰ No suit shall be brought against any director or stockholder for any debt of a corporation organized as aforesaid, of which he is such director or stockholder, until judgment be obtained therefor against such corporation and execution thereon returned unsatisfied.”⁴¹

“No corporation created under the provisions of this Act, nor the directors thereof, shall make dividends except from the surplus or net profits arising from its business. Dividends may be paid in cash or capital stock at par, but otherwise the corporation shall not divide, withdraw, or in any way pay to the stockholders, or any of them, any part of its capital stock, or reduce its capital stock, except according to this Act, and in case of any violation of the provisions of this section the directors under whose administration the same may happen shall be jointly and severally liable in an action on the case at any time within six years after paying such dividend to the corporation and to its creditors or any of them in the event of its dissolution or insolvency, to the full amount of the dividend made or capital stock so divided, withdrawn, paid out, or reduced, with interest on the same from the time such liability accrued; *provided*, that any director who may have been absent when the same was done or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered at large on the books containing the minutes of the proceedings of the directors at the time the same was done, or forthwith after he shall have notice of the same, and by causing a true copy of said dissent to be published, within two weeks after the same shall have been so entered, in a newspaper

⁴⁰ *Ibid.* § 50.

⁴¹ *Ibid.* § 51.

published in the county where the corporation has its principal office." ⁴²

"If the directors or officers of any corporation, organized under the provisions of this Act, shall knowingly cause to be published or given out any written statement or report of the condition or business of the corporation that is false in any material respect, the officers and directors causing such report or statement to be published, or given out, or assenting thereto, shall be jointly and severally, individually liable for any loss or damage resulting therefrom." ⁴³

"If [the President, Secretary or Treasurer] shall neglect or refuse to [give to any creditor or stockholder and file with the Secretary of State a certificate of the amount of stock issued and the amount paid in] for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted after the making of such payments as provided for in the preceding section and before the filing of such certificate." ⁴⁴

§ 388. District of Columbia.

"All the stockholders of every company incorporated under this subchapter shall be severally individually liable to the creditors of the company in which they are stockholders for the unpaid amount due upon the shares of stock held by them, respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded." ⁴⁵

"No loan of money shall be made by any company upon the security, in whole or in part, of its own stock; and if any such loan shall be made, the trustee or officer authorizing the same shall be responsible to the corporation therefor: *Provided*, That

⁴² *Ibid.* § 35.

⁴³ *Ibid.* § 37.

⁴⁴ *Ibid.* § 24.

⁴⁵ Dist. Col. Code, § 615.

nothing herein contained shall be held to release the borrower in such a case from liability to the corporation." ⁴⁶

"If the trustees of any company shall declare and pay any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing and for all that shall be thereafter contracted while they shall respectively remain in office. If any of the trustees shall object to declaring such dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the secretary of the company and with the recorder of deeds of the District, they shall be exempt from the liability prescribed in the preceding section." ⁴⁷

Additional liabilities of safe-deposit, trust, loan, mortgage, title insurance, surety and guaranty companies, are as follows: "All stockholders of every company incorporated under this subchapter, . . . shall be severally and individually liable to the creditors of such company to an amount equal to and in addition to the amount of stock held by them respectively for all debts and contracts made by such company." ⁴⁸

"If any company fails to comply with the provisions of [§ 730, requiring the filing of annual reports with the Comptroller of the Currency] all the directors or trustees of such company shall be jointly and severally liable for the debts of the company then existing and for all that shall be contracted before such report shall be made: *Provided*, That in case of failure of the company in any year to comply with the provisions of section seven hundred and thirty of this subchapter, and any of the directors shall, on or before January fifteenth of such year, file his written request for such compliance with the secretary of the company, the Comptroller of the Currency, and the recorder of deeds of the District of Columbia, such

⁴⁶ *Ibid.* § 621, as amended June 30, 1902.

⁴⁷ *Ibid.* §§ 622, 623.

⁴⁸ *Ibid.* § 734.

director shall be exempt from the liability prescribed in this section." ⁴⁹

§ 389. Florida.

"If any execution shall issue against the property or effects of any corporation, and there cannot be found whereon to levy, then such execution may be issued against any of the stockholders to an extent equal in amount for so much as may remain unpaid upon the subscription and no further, and all property whether real or personal of any stockholder in any corporation aforesaid shall be exempt from the debts and liabilities of such corporation contracted in its corporate capacity, except the stock of said stockholder of or in said corporation to the extent mentioned aforesaid." ⁵⁰

"Stockholders of every banking company shall be held individually responsible equally and ratably and not for one another for all contracts, debts and engagements of such company to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares. Persons holding stock as executors, administrators, guardians or trustees shall not be personally subject to any liability as stockholders, but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in trust funds would be, if living and competent to hold the stock in his own name." ⁵¹

"If the directors shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for the debts of the corporation then existing to the extent of the dividends so declared. If, however, any director be absent at the time of making the

⁴⁹ *Ibid.* § 731.

⁵⁰ Fla. Rev. Stat. § 2152.

⁵¹ *Ibid.* § 2172.

dividend or shall at the time object thereto in writing, he shall not be so liable." ⁵²

"If any corporation dissolve leaving debts unpaid, suits may be brought against any persons who were stockholders at the time of such dissolution, without joining the corporation in such suit, for so much as may remain unpaid upon his or her subscription and no further, the collection to be made from the stock of each stockholder respectively only, and if any number of stockholders (defendant in the case) shall not have property enough in stock to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders and collections made accordingly, deducting from the amount a sum in proportion to the amount remaining unpaid on the plaintiff's subscription at the time the corporation dissolved." ⁵³

§ 390. Georgia.

"In case of the failure of said corporation the stockholders shall be bound, in their private capacity, to any creditor of said corporation for the amount of stock subscribed for by them, until the said subscription is fully paid up, or until the stockholder shall have paid, out of his private property, debts of the said corporation to an amount equal to his unpaid subscription."⁵⁴ Whenever a stockholder in any corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability by such transfer, unless such corporation shall fail within six months from the date of such transfer.⁵⁵ The stockholders in whose name the capital stock stands upon the books of such corporation at the date of its failure shall be primarily liable to respond upon such individual liability; but upon proof made that any shareholders at the date of the failure are insolvent, recourse may

⁵² *Ibid.* § 2163.

⁵³ *Ibid.* § 2156.

⁵⁴ Ga. Code, § 2350, ch. 3.

⁵⁵ *Ibid.* § 1883.

be had against the person from whom such insolvent shareholder received his stock, if within a period of six months prior to the date of the failure of such corporation.⁵⁶ Such individual liability shall be an asset of such corporation, to be enforced by the assignee, receiver or other officer having the legal right to collect, marshal and distribute the assets of such failed corporation.”⁵⁷

“In all suits against the members of a private association, joint-stock company, or the members of existing or dissolved corporations, to recover a debt due by the association, company, or corporation, of which they are or have been members, or for the appropriation of money or funds in their hands to the payment of such debt, the plaintiff or complainant in such suit may institute the same, and proceed to judgment therein against all or any one or more of the members of such association, company, or corporation, or any other person liable, and recover of the member or members sued the amount of unpaid stock in his hands, or other indebtedness of each member or members; provided, the same does not exceed the amount of the plaintiff's debt against such association, company, or corporation; and if it exceed such debt, then so much only as will be sufficient to satisfy such debt.”⁵⁸

“Plaintiffs, within one month after the institution of any suit against any corporation, joint stock or manufacturing company, may publish once a week, for four successive weeks, in some public gazette of this State, notice of the commencement of said suit or suits, and said publication shall operate as notice to each stockholder in said corporation, joint-stock or manufacturing company, for the purposes hereinafter mentioned.”⁵⁹

“When notice has been given as provided in the preceding sections, and a judgment or decree has been obtained against

⁵⁶ *Ibid.* § 1889.

⁵⁷ *Ibid.* § 1890.

⁵⁸ *Ibid.* § 1892.

⁵⁹ *Ibid.* § 1893.

any corporation, joint stock or manufacturing company, where the individual or private property of the stockholders is bound for the whole or any part of the debts of said corporation, joint stock or manufacturing company, execution shall first be issued against the goods and chattels, lands and tenements of said corporation, joint-stock or manufacturing company; and upon the return thereof by the proper officer, with the entry thereon of 'No property to be found,' then, and in that case, the clerk or other officer, upon an application of the plaintiff, his agent or attorney, accompanied with a certificate as hereinafter directed to be obtained, forthwith shall issue an execution against each of the stockholders (if required) for their ratable part of said debt and cost of suit, in proportion to their respective shares or other liabilities under their charter of incorporation."⁶⁰

§ 391. Hawaii.

"Where the whole capital of a corporation shall not have been paid in, and the capital paid in shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share as fixed by the charter of the company, or such proportion of that sum as shall be required to satisfy the debts of the company."⁶¹ No stockholder shall be liable for the debts of the corporation beyond the amount of what may be due upon the share or shares held or owned by him."⁶²

§ 392. Idaho.

"Each stockholder of a corporation is individually and personally liable for its debts and liabilities to the full amount unpaid upon the par or face value of the stock or shares owned by him. Any creditor of the corporation may institute ac-

⁶⁰ *Ibid.* § 1894.

⁶¹ Hawaii Civ. L. § 2018.

⁶² *Ibid.* § 2019.

tions against any of its stockholders jointly or severally, and in such action the court must determine the amount unpaid upon the stock held or owned by each defendant, and a several judgment must be entered against him for a sum not exceeding such amount and nothing in this title must be construed to render any stockholder individually or personally liable, as such stockholder, for debts or liabilities of the corporation, either at the suit of a creditor or for assessments or calls, to an amount exceeding the balance unpaid upon its stock, or the difference between the amount that has been actually paid upon his stock and the par or face value thereof, except when so liable on the ground of fraud or misrepresentation, or concealment, or for neglect or misconduct as an officer, agent, stockholder, or member of the corporation; and no corporation shall issue any stock as paid up, or in whole or in part, or credit any amount, assessment or call as paid upon any of its stock, except for money, property, labor or services actually received by the corporation, or actually paid upon the indebtedness of the corporation as provided in this section, to the full value of the amount credited upon such stock. If any stockholder of an insolvent corporation pays the full amount unpaid upon the stock held by him, as above defined, upon the overdue debts of the corporation, incurred while he was such stockholder, he is relieved from any further personal liability upon his stock, but not from any liability for fraud, neglect or misconduct. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred by the corporation; and such liability is not released or discharged by any subsequent transfer of stock. When such liability does not arise upon contract it shall be deemed to be incurred when judgment therefor is obtained against the corporation. The term stockholder as used in this section applies not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, though the same appears on the books in the name of another; and also to every per-

son who has advanced the installments or purchase money, or subscribed for stock, in the name of a minor, so long as the latter remains a minor and also to every guardian or trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee are not liable under the provisions of this section, by reason of any such investment; nor is the person for whose benefit such investment is made responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment continues until that period, or while the investment continues. Stock held as collateral security, or by a trustee who is not the beneficial owner, or in any other representative capacity without a beneficial interest, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation, but the pledgor, or person, or estate represented is to be deemed the stockholder, as respects such liability. Members of corporations not organized for profit and having no capital stock are not individually or personally liable for its debts or liabilities, unless such liability is imposed by the by-laws of the corporation and then only to the extent so imposed; any such liability may be enforced, to the extent imposed by the by-laws, by joint or several actions against members, as before provided. The liability of each stockholder of a corporation not formed under the laws of this state, but doing business within the state, is the same as the liability of stockholders of corporations organized under the laws of this state.”⁶³

“All corporations doing business in this state, whether organized under the laws of this state, or some other state, desiring to avail themselves of the provisions of the preceding section, shall cause to be written or printed after the corporate name, on its stock certificates, letters and bill heads, and all its official documents the word ‘limited’; also, after the

⁶³ *Ida.* § 2119.

corporate signature to all official or public documents the word 'limited.' ” ⁶⁴

“The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock nor must they reduce or increase the capital stock, except as in this Title specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have occurred, (except those who may have caused their dissent therefrom to be entered at large on the minutes of directors at the time, or, when not present, when the same did occur) are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.” ⁶⁵

“Any officer of a corporation, who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, is liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated they are jointly and severally so liable.” ⁶⁶

§ 393. Illinois.

“The shares of stock shall not be less than ten nor more than one hundred dollars each, and shall be deemed personal property, and transferable as such in the manner provided by the

⁶⁴ *Ibid.* § 2120.

⁶⁵ *Ibid.* § 2106.

⁶⁶ *Ibid.* § 2113.

by-laws, and subscriptions therefor shall be made payable to the corporation, and shall be payable in such installments and at such time or times as shall be determined by the directors or managers, and an action may be maintained in the name of the corporation to recover any installment which shall remain due and unpaid for the period of 20 days after personal demand therefor; or, in cases where personal demand is not made, within 30 days after a written or printed demand has been deposited in the postoffice, properly addressed to the post-office address of the stockholder. The directors may, by by-law, prescribe other penalties for a failure to pay the installments that may from time to time become due, but no penalty working a forfeiture of stock or of the amounts paid thereon, shall be declared as against any estate before distribution shall have been made, or against any stockholder before demand shall have been made for the amount due thereon, either in person or by a written or printed notice duly mailed to the proper address of such stockholder at least 30 days prior to the time when such forfeiture is to take effect: *Provided*, that proceeds of said sale over and above the amount due on said shares shall be paid to the delinquent stockholder.” ⁶⁷

“Every assignment or transfer of stock on which there remains any portion unpaid shall be recorded in the office of the recorder of deeds of the county within which the principal office is located, and each stockholder shall be liable for the debts of the corporation to the extent of the amount that may be unpaid upon the stock held by him, to be collected in the manner herein provided. No assignor of stocks shall be released from any such indebtedness by reason of any assignment of his stocks, but shall remain liable therefor, jointly with the assignee, until the said stock be fully paid. Whenever any action is brought to recover any indebtedness against the corporation, it shall be competent to proceed against any one or more stockholders at the same time to the extent of the balance

⁶⁷ Ill. Rev. Stat. ch. 32, § 7.

unpaid by such stockholders upon the stock owned by them, respectively, whether called in or not, as in cases of garnishment. Every assignee or transferee of stock shall be liable to the company for the amount unpaid thereon, to the extent and in the same manner as if he had been the original subscriber."⁶⁸

"No person holding stock in any corporation as executor, administrator, conservator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such corporation; but the person pledging such stock shall be considered as holding the same and shall be liable as stockholder accordingly, and the estate and funds in the hands of such executor, administrator, conservator, guardian or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund, would have been if he had been living and had been competent to act and hold the stock in his own name."⁶⁹

"If the indebtedness of any stock corporation shall exceed the amount of its capital stock, the directors and officers of such corporation assenting thereto, shall be personally and individually liable for such excess to the creditors of such corporation.⁷⁰ If the directors or other officers or agents of any stock corporation shall declare and pay any dividend when such corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers or agents assenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, and for all that shall thereafter be contracted while they shall, respectively, continue in office.⁷¹ If any certified report or statement made, or public notice given by the officers of any corporation, shall

⁶⁸ *Ibid.* § 8.

⁶⁹ *Ibid.* § 23.

⁷⁰ *Ibid.* § 16.

⁷¹ *Ibid.* § 19.

be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all damages arising therefrom.”⁷²

“If any corporation, or its authorized agents, shall do or refrain from doing any act which shall subject it to a forfeiture of its charter or corporate powers, or shall allow any execution or decree of any court of record for a payment of money, after demand made by the officer to be returned ‘no property found,’ or to remain unsatisfied for not less than ten days after such demand, or shall dissolve or cease doing business, leaving debts unpaid, suits in equity may be brought against all persons who were stockholders at the time, or liable in any way for the debts of the corporation by joining the corporation in such suit; and each stockholder may be required to pay his *pro rata* share of such debts or liabilities, to the extent of the unpaid portion of his stock, after exhausting the assets of such corporation, and if any stockholder shall not have property enough to satisfy his portion of such debts or liabilities, then the amount shall be divided equally among all the remaining solvent stockholders.”⁷³

§ 394. Indiana.

“If any part of the capital stock of such company shall be withdrawn and refunded to the stockholders before the payment of all the debts of the company, all the stockholders of such company shall be jointly and severally liable for the payment of such debts.”⁷⁴ No person holding stock in any such company as executor, administrator, guardian, or trustee, or as collateral security, shall be personally subject to any liability as stockholder of such company; but the estate and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable therefor, and the person pledging

⁷² *Ibid.* § 21.

⁷³ *Ibid.* § 25.

⁷⁴ Ind. R. S. 1901, § 3430.

his stock as aforesaid shall be considered as holding the same." ⁷⁵

"In case of insolvency or insufficiency of effects of a corporation to pay the debts against it, each of the stockholders shall be liable in an amount equal to the amount of his stock at the time the debts were contracted and no further, after the assets of the corporation are exhausted: *Provided*, That the directors, with the assent of the stockholders, may increase this liability to any amount not exceeding three times the amount of the stock held by each stockholder." ⁷⁶

"The stockholders in every bank or banking company shall be individually responsible, to an amount over and above their stock equal to their respective shares of stock, for all debts or liabilities of said bank or banking company." ⁷⁷ The same liability is imposed upon the stockholders in a bonding or surety company,⁷⁸ telegraph company,⁷⁹ and telephone company.⁸⁰

Corporations formed under the Act of 1875 "to carry on any kind of manufacturing, mining, mechanical, or chemical business, or to furnish motive power to carry on such business; or to supply any city or village with water; or to form union stock yards and transit companies, and operating, maintaining, and transacting the business incident to such companies; or to form grain elevator companies, and constructing, maintaining, and operating elevators, and transacting the business incident thereto; or to form companies for the purpose of buying and selling dry goods, carpets, boots and shoes, millinery goods, fancy goods, or jewelry, in connection with the manufacture of such goods and articles into any articles for which they are suitable, and for the sale of such articles when they are manufactured," are governed by the following provisions: "The

⁷⁵ *Ibid.* § 3431.

⁷⁶ *Ibid.* § 3451.

⁷⁷ *Ibid.* § 205.

⁷⁸ *Ibid.* § 5494, 11.

⁷⁹ *Ibid.* § 5507.

⁸⁰ *Ibid.* § 5528.

stockholders and members of manufacturing and mining corporations shall only be liable for the amount of the stock subscribed by them respectively; and privileges or immunities which have been heretofore granted to such corporations shall, upon the same terms, equally belong to all citizens who may desire to incorporate themselves for the same purpose: *Provided*, That such stockholders shall be individually liable for all debts, due and owing laborers, servants, apprentices, and employees for services rendered such corporation.⁸¹ In case of insolvency or insufficiency of effects of a corporation to pay the debts against it, each of the stockholders shall be liable in an amount equal to the amount of his stock at the time the debts were contracted, and no further, after the assets of the corporation are exhausted: *Provided*, That the directors, with the assent of the stockholders, may increase the liability to any amount not exceeding three times the amount of stock held by each stockholder.”⁸²

“If any certificate or report made or public notice given by the officers of any such company, as required by this Act, shall be false in any material representation, or if they shall fail to give such notice or make such report, and any person or persons shall be misled or deceived by such false report or certificate or on account of such failure to make such report, and damaged thereby, then all the officers who shall sign the same, knowing it to be false, or fail to give the notice or make reports as aforesaid, shall be jointly and severally liable for all damages resulting from such failure on their part while they are stockholders in such company.”⁸³

“When any of the officers of such corporation shall be liable, by the provisions of this Act, to pay the debt of such company, any person to whom they shall be so liable may have an action against such officer; and the declaration or statement, in such action, shall specify the claim against the company, and the

⁸¹ *Ibid.* § 5077.

⁸² *Ibid.* § 5128.

⁸³ *Ibid.* § 5073.

ground upon which the plaintiff charges the defendant personally; and such action may be brought although suit be pending against the company for the same claim or demand, and both be prosecuted until the plaintiff shall have recovered his debt with costs and charges." ⁸⁴

"If the directors of any such company shall declare and pay a dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, knowing such company to be insolvent or that such dividend would render it so, the directors assenting to such dividend shall be jointly and severally liable, in an action founded on this Act, for all debts due from such company, at the time of such dividend: *Provided*, That if any of the directors object to declaring such dividend, and file their objections in writing with the secretary of the company and with the clerk of the county, the director or directors so objecting shall be exempt from such liability." ⁸⁵

"If any company organized and established under the authority of this Act, and of the Act to which this is supplementary, shall violate any of the provisions thereof, and shall thereby become insolvent, the directors ordering or assenting to such violation shall jointly and severally be liable, in an action founded on said Acts, for all debts contracted after such violation as aforesaid." ⁸⁶

§ 395. Iowa.

"A failure to substantially comply with the foregoing requirements in relation to organization and publicity shall render the individual property of the stockholders liable for the corporate debts; but corporators and stockholders in railway and street railway companies shall be liable only for the amount of stock held by them therein." ⁸⁷

⁸⁴ *Ibid.* § 5074.

⁸⁵ *Ibid.* § 5075.

⁸⁶ *Ibid.* § 5076.

⁸⁷ Ia. Code, § 1616.

"The transfer of shares is not valid, except as between the parties thereto, until regularly entered upon the books of the company, showing the name of the person by and to whom transferred, the numbers or other designation of the shares, and the date of the transfer; but such transfer shall not exempt the person making it from any liability of said corporation created prior thereto. Its books must be so kept as to show the original stockholders, their interests, the amount paid on their shares, and all transfers thereof; which books, or a copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same. When any shares of stock shall be transferred to any person, firm or corporation as collateral security, such person, firm or corporation may notify in writing the secretary of the corporation whose stock is transferred as aforesaid, and from the time of such notice and until written notice that said stock shall have ceased to be held as collateral security, said stock so transferred and noticed as aforesaid shall be considered in law as transferred on the books of the corporation which issued said stock, without any actual transfer on the books of such corporation of such stock. In such case, it shall be the duty of the secretary or cashier of the corporation or of the person or firm to which such stock shall have been transferred as collateral security at once, upon its ceasing to be so held, to inform the secretary of the corporation issuing such stock of such fact. The secretary of the company whose stock is transferred as collateral shall keep a record showing such notice of transfer as collateral, and notice of discharge as collateral, subject to public inspection. No holder of stock as collateral security shall be liable for assessments on the same." ⁸⁸

"No certificate or shares of stock shall be issued, delivered or transferred by any corporation, officer or agent thereof, or by the owner of such certificate or shares, without having indorsed on the face thereof what amount or portion of the par

⁸⁸ *Ibid.* § 1626.

ground upon which the plaintiff charges the defendant personally; and such action may be brought although suit be pending against the company for the same claim or demand, and both be prosecuted until the plaintiff shall have recovered his debt with costs and charges.”⁸⁴

“If the directors of any such company shall declare and pay a dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, knowing such company to be insolvent or that such dividend would render it so, the directors assenting to such dividend shall be jointly and severally liable, in an action founded on this Act, for all debts due from such company, at the time of such dividend: *Provided*, That if any of the directors object to declaring such dividend, and file their objections in writing with the secretary of the company and with the clerk of the county, the director or directors so objecting shall be exempt from such liability.”⁸⁵

“If any company organized and established under the authority of this Act, and of the Act to which this is supplementary, shall violate any of the provisions thereof, and shall thereby become insolvent, the directors ordering or assenting to such violation shall jointly and severally be liable, in an action founded on said Acts, for all debts contracted after such violation as aforesaid.”⁸⁶

§ 395. Iowa.

“A failure to substantially comply with the foregoing requirements in relation to organization and publicity shall render the individual property of the stockholders liable for the corporate debts; but corporators and stockholders in railway and street railway companies shall be liable only for the amount of stock held by them therein.”⁸⁷

⁸⁴ *Ibid.* § 5074.

⁸⁵ *Ibid.* § 5075.

⁸⁶ *Ibid.* § 5076.

⁸⁷ Ia. Code, § 1616.

"The transfer of shares is not valid, except as between the parties thereto, until regularly entered upon the books of the company, showing the name of the person by and to whom transferred, the numbers or other designation of the shares, and the date of the transfer; but such transfer shall not exempt the person making it from any liability of said corporation created prior thereto. Its books must be so kept as to show the original stockholders, their interests, the amount paid on their shares, and all transfers thereof; which books, or a copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same. When any shares of stock shall be transferred to any person, firm or corporation as collateral security, such person, firm or corporation may notify in writing the secretary of the corporation whose stock is transferred as aforesaid, and from the time of such notice and until written notice that said stock shall have ceased to be held as collateral security, said stock so transferred and noticed as aforesaid shall be considered in law as transferred on the books of the corporation which issued said stock, without any actual transfer on the books of such corporation of such stock. In such case, it shall be the duty of the secretary or cashier of the corporation or of the person or firm to which such stock shall have been transferred as collateral security at once, upon its ceasing to be so held, to inform the secretary of the corporation issuing such stock of such fact. The secretary of the company whose stock is transferred as collateral shall keep a record showing such notice of transfer as collateral, and notice of discharge as collateral, subject to public inspection. No holder of stock as collateral security shall be liable for assessments on the same." ⁸⁸

"No certificate or shares of stock shall be issued, delivered or transferred by any corporation, officer or agent thereof, or by the owner of such certificate or shares, without having indorsed on the face thereof what amount or portion of the par

⁸⁸ *Ibid.* § 1828.

value has been paid to the corporation issuing the same, and whether such payment has been in money or property. Any person violating the provisions of this section, or knowingly making a false statement on such certificate, shall be fined not less than one hundred dollars nor more than five hundred dollars, and shall stand committed to the county jail until such fine and costs are paid. This section shall not apply to railway or *quasi*-public corporations organized before the first day of October, 1897.”⁸⁹

“Neither anything in this chapter contained, nor any provisions in the articles of corporation, shall exempt the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors; and execution against the company may, to that extent, be levied upon the private property of any such individual. In none of the cases contemplated in this chapter can the private property of stockholders be levied upon for the payment of corporate debts while corporate property can be found with which to satisfy the same; but it will be sufficient proof that no property can be found, if an execution has issued on a judgment against the corporation, and a demand has been thereon made of some one of the last acting officers of the body for property on which to levy, and he neglects to point out any such property. In suits by creditors to recover unpaid installments upon shares of stock against any person who has in any manner obtained such stock of the corporation, the stockholder shall be liable for the difference between the amount paid by him to the corporation for said stock and the face value thereof.”⁹⁰ Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against him, in any stage of which he may point out corporate property subject to levy; and, upon his satisfying the court of the existence of such property, by affi-

⁸⁹ *Ibid.* § 1627.

⁹⁰ *Ibid.* § 1631.

davit or otherwise, the cause may be continued, or execution against him stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but if a demand of property has been made as contemplated in the preceding section, the costs of said action shall, in any event, be paid by the company or the defendant therein, but he shall not be permitted to controvert the validity of the judgment rendered against the corporation unless it was rendered through fraud and collusion.⁹¹ When the property of a stockholder is taken for a corporate debt, he may maintain an action against the corporation for indemnity, and against any of the other stockholders for contribution.”⁹²

“The diversion of the funds of the corporation to other objects than those mentioned in its articles and in the notice published, if any person be injured thereby, and the payment of dividends which leaves insufficient funds to meet the liabilities thereof, shall be such fraud as will subject those guilty thereof to the penalties of the preceding section; and such dividends, or their equivalent, in the hands of stockholders, shall be subject to such liabilities. If the directors or other officers or agents of any corporation shall declare and pay any dividend when such corporation is known by them to be insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers or agents knowingly consenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, but dividends made in good faith before knowledge of the occurring of losses shall not come within the provisions of this section.⁹³ Any intentional violation by the board of directors or the managing officers of the corporation of the provisions of the two pre-

⁹¹ *Ibid.* § 1632.

⁹² *Ibid.* § 1633.

⁹³ *Ibid.* § 1621.

ceding sections shall work a forfeiture of the corporate privileges, to be enforced as provided by law. If the indebtedness of any corporation shall exceed the amount of indebtedness permitted by law, the directors and officers of such corporation knowingly consenting thereto shall be personally and individually liable to the creditors of such corporation for such excess." ⁹⁴

§ 396. Kansas.

The Constitution provides that "dues from corporations shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by each stockholder, and such other means as shall be provided by law; but such individual liabilities shall not apply to railroad corporations, nor corporations for religious or charitable purposes." ⁹⁵ In pursuance of this provision, the following acts were passed: "If any execution shall have been issued against the property or effects of a corporation, except a railway or a religious or charitable corporation, and there cannot be found any property upon which to levy such execution, such corporation shall be deemed to be insolvent, and upon application to the court from which said execution was issued, or to the judge thereof, a receiver shall be appointed, to close up the affairs of said corporation. Such receiver shall immediately institute proceedings against all stockholders to collect unpaid subscriptions to the stock of such corporation, together with the additional liability of such stockholders equal to the par value of the stock held by each. All collections made by the receiver shall be held for the benefit of all creditors, and shall be disbursed in such manner and at such times as the court may direct. Should the collections made by the receiver exceed the amount necessary to pay all claims against such corporation, together with all costs and expenses of the receivership, the remainder shall be distributed among the stockholders from

⁹⁴ *Ibid.* § 1622.

⁹⁵ Kan. Const. Art. 12, § 2.

whom collections have been made, as the court may direct; and in the event any stockholder has not paid the amount due from him the stockholders making payment shall be entitled to an assignment of any judgment or judgments obtained by the receiver against such stockholder, and may enforce the same to the extent of his proportion of claims paid by them. The stockholders of every corporation, except railroad corporations or corporations for religious or charitable purposes, shall be liable to the creditors thereof for any unpaid subscriptions, and in addition thereto for an amount equal to the par value of the stock owned by them, such liability to be considered an asset of the corporation in the event of insolvency, and to be collected by a receiver for the benefit of all creditors." ⁹⁶

But these statutory provisions have been repealed except as to stockholders in banking corporations; ⁹⁷ and the stockholders' liability now rests on the constitutional provision alone.

"If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted, as long as they shall respectively continue in office. The amount for which they shall all be so liable shall not exceed the amount of such dividend; and if any of the directors shall be absent at the time of making the dividend, or shall object thereto at the time such dividend is declared, and shall file their objections in writing, with the secretary or other officer of the corporation having charge of the books, they shall be exempted from the said liability." ⁹⁸

§ 397. Kentucky.

"The stockholders of each corporation shall be liable to

⁹⁶ Kan. Rev. Stat. §§ 1314, 1315.

⁹⁷ Kan. 1903, ch. 152.

⁹⁸ Kan. Rev. Stat. ch. 66, § 32.

creditors for the full amount of the unpaid part of the stock subscribed for by them, and stockholders of corporations not organized for educational, religious, charitable or benevolent purposes, or for the purpose of building, constructing or operating turnpikes or bridges, lines of railroad, telegraph or telephone, or developing or improving lands, mines or waterways, or constructing or operating water, gas or electric plants, or operating for petroleum, natural gas or salt water, shall be individually responsible, equally and ratably, and not one for the other, for all contracts and liabilities of such corporation to the extent of the amount of their stock at par value, in addition to the amount of such stock; but persons holding stock as fiduciaries shall not be personally liable as stockholders, but the estates in their hands shall be liable, in the same manner and to the same extent as the property of other stockholders; and no transfer of stock shall operate as a release of any such liability existing at the time of such transfer: *Provided*, The action to enforce such liability shall be commenced within two years from the time of transfer.”⁹⁹

“The stockholders of each bank organized under this article shall be individually responsible, equally and ratably, and not one for the other, for all contracts and liabilities of such bank to the extent of the amount of their stock at par value in addition to the amount of such stock; but persons holding stock as fiduciaries shall not be personally liable as stockholders, but the estate in their hands shall be liable in the same manner and to the same extent as the property of other stockholders; and no transfer of stock shall operate as a release of any such liability existing at the time of such transfer, provided the action to enforce such liability shall be commenced within two years from the time of the transfer; and the directors of each bank shall, in January of each year, file with the Secretary of State a correct list of the stockholders and officers of such bank.”¹⁰⁰ The same provision

⁹⁹ Ky. Stat. § 547.

¹⁰⁰ *Ibid.* § 595.

is made as to the liability of stockholders in trust companies.¹⁰¹

“When the net assets of any [insurance] company incorporated in this State do not amount to more than four-fifths of its paid-up capital, it may make good its capital to the original amount by assessment of its stock. Shares on which such assessment is not paid within sixty days after demand shall be forfeitable, and may be cancelled by a vote of the directors, and new shares issued to make up the deficiency. If such company shall not, within three months after notice from the insurance commissioner to that effect, make good its capital as aforesaid, or reduce the same as allowed by section six hundred and eighty-eight, its authority to transact new business shall cease.”¹⁰² Guaranty and surety companies and title insurance companies are subject to the same provisions.¹⁰³

“If the directors of any incorporated company shall declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally individually liable for all debts of the corporation then existing, and for all that shall be thereafter incurred while they, or a majority of them, continue in office.”¹⁰⁴

“If the directors or officers of any corporation shall knowingly cause to be published or given out any statement or report of the condition or business of the corporation that is false in any material respect, the officers and directors causing such report or statement to be published or given out, or assenting thereto, shall be jointly and severally individually liable for any loss or damage resulting therefrom.”¹⁰⁵

“If the directors or officers of any corporations shall fail or

¹⁰¹ *Ibid.* § 613.

¹⁰² *Ibid.* § 695.

¹⁰³ *Ibid.* §§ 724, 739.

¹⁰⁴ *Ibid.* § 548.

¹⁰⁵ *Ibid.* § 549.

refuse to comply with, or shall violate any of the provisions of this article, those so failing, refusing or violating shall be jointly and severally individually liable for any loss or damage resulting to any person from such failure, refusal or violation, and, in addition thereto, the persons so liable shall be each punished by a fine of not less than one hundred nor more than one thousand dollars." ¹⁰⁶

"If any [title insurance] corporation is under liability for losses equal to its net assets, and the president and directors knowing it, make or assent to further insurance, they shall be personally liable for any losses under such insurance." ¹⁰⁷

§ 398. Louisiana.

"No stockholder shall ever be held liable or responsible for the contracts or faults of such corporation in any further sum than the unpaid balance due to the company on the shares owned by him; nor shall any mere informality in organization have the effect of rendering a charter null, or of exposing a stockholder to any liability beyond the amount of his stock." ¹⁰⁸

"It shall be a crime, the punishment of which shall be prescribed by law, for any president, director, manager, cashier, or other officer or owner of any private or public bank or banking institution or other corporation accepting deposits or loans to assent to the reception of deposits or the creation of debts by such banking institutions after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; any such officer, agent or manager shall be individually responsible for such deposits so received and all such debts so created with his assent." ¹⁰⁹

§ 399. Maine.

There is no liability of stockholders except for calls on

¹⁰⁶ *Ibid.* § 550.

¹⁰⁷ *Ibid.* § 738.

¹⁰⁸ La. Rev. Stat. § 690; and see Civ. Code, Art. 437.

¹⁰⁹ La. Const. Art. 269.

unpaid stock, imposed by the common law; and "in the absence of actual fraud in the transaction" if stock is issued as fully paid for any consideration whatever, it "shall be full paid stock and not liable to any further call or payment thereon."¹¹⁰ There is not statutory provision for liability of directors.

§ 400. Maryland.

"All the stockholders of any such corporation [created under general law] shall be severally and individually liable to the creditors of the corporation of which they are stockholders to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by the corporation, until the whole amount of the capital stock fixed and limited by the corporation shall have been paid in, and a certificate thereof made and filed; . . . but no stockholder shall be individually liable to the creditors of such corporation, except to the amount of his, her or their unpaid subscription to the capital stock."¹¹¹ "No person holding stock in any such corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholders of such corporation; but the person pledging the stock shall be considered as holding the same, and shall be liable as stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate or ward or person interested in such trust fund would have been if he had been living and competent to act and held the same stock in his own name."¹¹²

"After judgment against a corporation is returned unsatisfied, the plaintiff may file a bill against all or any persons who may be in any manner indebted to said corporation,

¹¹⁰ Me. 1901, ch. 229, § 13.

¹¹¹ Md. Gen. L. Art. 23, § 64.

¹¹² *Ibid.* § 66.

either for the stock thereof or on any other account; and if the court shall find such person or persons to be indebted to said corporation, a decree shall pass directing such persons so found to be indebted to bring the money into court, to be distributed ratably among the creditors of such corporation, in the same manner that distribution is made on a creditors' bill." ¹¹³

"The general assembly shall grant no charter for banking purposes, nor renew any banking corporation now in existence except upon the condition that the stockholders shall be liable to the amount of their respective share or shares of stock in such banking institution for all its debts and liabilities upon note, bill, or otherwise." ¹¹⁴

"If the trustees, managers or directors of any such corporation [created under general laws] shall declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, or would diminish the amount of the capital stock, they shall be jointly and severally liable for all the debts of the corporation then existing, and also for all that shall hereafter be contracted, while they shall respectively continue in office, even although the whole amount of the capital of said corporation has been paid in.¹¹⁵ If any of the trustees, directors or managers of such corporation shall object to declaring such dividend, or to the payment of the same, and having voted against the declaration thereof shall at any time before the time fixed for the payment of the same record a certificate of their objection in writing with the clerk of the court in which the original certificate of incorporation is filed, they shall be exempt from the liability imposed in the preceding section." ¹¹⁶

"No loan of money shall be made by any such corporation to any stockholder therein; and if any such loan shall be made to any stockholder the officer or officers who shall make it or

¹¹³ *Ibid.* § 300.

¹¹⁴ Md. Const. Art. 3, § 39.

¹¹⁵ Md. Gen. L. Art. 23, § 67.

¹¹⁶ *Ibid.* § 68.

who shall assent thereto shall, in the event of the insolvency of such corporation, be jointly and severally liable for all the debts of the corporation contracted before the making of said loan to the extent of double the amount of any loss arising out of said loan.”¹¹⁷

§ 401. Massachusetts.

The liability of stockholders and directors in business corporations is regulated as follows: “The stockholders of a corporation which reduces its capital stock contrary to the provisions of section forty-three shall be liable for the payment of the debts and contracts of the corporation existing at the time of such reduction to the extent of the amount withdrawn and paid to them respectively. The stockholders of a corporation shall also be liable for all money due to operatives for services rendered within six months before demand made upon the corporation and its neglect or refusal to make such payment. A stockholder who pays on a judgment or otherwise more than his proportion of any such debt shall have a claim for contribution against the other stockholders.”¹¹⁸

“The president, treasurer and directors of every corporation shall be jointly and severally liable for all the debts and contracts of the corporation contracted or entered into while they are officers thereof if any stock is issued in violation of the provisions of section 14 [requiring that no stock be issued unless it is fully paid, or is issued in compliance with the provision for paying for stock in installments] or if any statement or report which is required by the provisions of this act is made by them which is false in any material representation and which they know to be false; but only the officers who sign such statement or report shall be so liable.”¹¹⁹ If stock is issued in violation of the provisions of this section, “the

¹¹⁷ *Ibid.* § 69.

¹¹⁸ Mass. 1903, ch. 437, § 33.

¹¹⁹ *Ibid.* § 34.

president, treasurer and directors shall be jointly and severally liable to any stockholder of the corporation for actual damages caused to him by such issue." ¹²⁰

"The directors of every corporation shall be jointly and severally liable for the debts and contracts of the corporation in the following cases: *First.* For declaring or assenting to a dividend if the corporation is, or thereby is rendered, bankrupt or insolvent, to the extent of such dividend. *Second.* For debts contracted between the time of making or assenting to a loan to a stockholder or director and the time of its repayment, to the extent of such loan. Directors who vote against declaring said dividend or who vote against making said loan shall not be liable as aforesaid." ¹²¹

"A stockholder or officer in a corporation shall not be held liable for its debts or contracts unless it has been duly adjudicated bankrupt or unless a judgment has been recovered against it and it has neglected, for thirty days after demand made on execution, to pay the amount due, with the officer's fees, or to exhibit to the officer real or personal property belonging to it and subject to be taken on execution, sufficient to satisfy the same, and the execution has been returned unsatisfied. After such adjudication of bankruptcy or after the execution has been so returned, the clerk, or other officer who has charge of the records of such corporation, upon request of a creditor of the corporation or of his attorney, shall furnish to him a certified list of the names of all persons who were officers and stockholders in such corporation at the time when the liability to be enforced against them personally accrued. The supreme judicial court or the superior court shall have jurisdiction in equity to compel such list to be furnished. After an adjudication of bankruptcy or after the execution has been so returned, any creditor may file a bill in equity in the supreme judicial court or the superior court in behalf of himself and of all other creditors of the corporation, against it and all

¹²⁰ *Ibid.* § 14.

¹²¹ *Ibid.* § 35.

persons who are liable to the plaintiff as stockholders or officers for the recovery of the money due from the corporation to himself and to the other creditors for which the stockholders or officers may be personally liable by reason of any act or omission on the part of the corporation or any of the other defendants, setting forth the bankruptcy of the corporation, or the judgment and proceedings thereon, and the grounds upon which it is expected to charge the stockholders or officers personally." ¹²²

"Such suit shall not be discontinued by the plaintiff except by order of the court after notice to other creditors. It shall not abate by reason of the non-joinder of persons liable as defendants, unless the plaintiff, after notice by plea or answer of their existence, unreasonably neglects to make them parties; nor shall it abate by reason of the death of a defendant, but his estate shall be liable in the hands of his executor or administrator, who may voluntarily appear, or who may be summoned by the plaintiff, to defend the suit.¹²³ Such sums as may be decreed to be paid by the stockholders in such suit shall be assessed upon them in proportion to the amounts of stock held by them respectively at the time when their liability accrued; but a stockholder shall not be liable to pay a larger amount than the amount of stock held by him at that time at its par value as fixed at the time when the liability to be enforced against him personally accrued." ¹²⁴

"If, in an action against a corporation, it appears to the court that one of the purposes of the action is to obtain a judgment against the corporation in order to enforce an alleged liability of a person who has been or is a stockholder or officer thereof, such stockholder or officer may be permitted, on petition, to defend such action, and the court may require of him, or of a person in his behalf, a bond with sufficient surety or sureties conditioned to pay to the plaintiff all costs which

¹²² *Ibid.* § 36.

¹²³ *Ibid.* § 37.

¹²⁴ *Ibid.* § 38.

may accrue and be taxed to him after the filing of said petition." ¹²⁵

The liability of officers and stockholders in other corporations for profit, is as follows: "The officers of a corporation which is subject to the provisions of this chapter shall be jointly and severally liable for its debts and contracts in the following cases, and not otherwise: The president and directors shall be so liable, First, For making or consenting to a dividend if the corporation is or thereby is rendered insolvent, to the extent of such dividend. Second, For debts contracted between the time of making or assenting to a loan to a stockholder and the time of its repayment, to the extent of such loan. Third, If the debts of a corporation exceed its capital, to the extent of such excess existing at the time of the commencement of the suit against the corporation in which the judgment was recovered upon which the suit in equity to enforce such liability is brought as hereinafter provided. The president, directors, and treasurer shall be so liable. Fourth, For signing any statement filed under the provisions of section forty-four [regulating the issue of stock to subscribers after the payment of the amount subscribed] if the property mentioned in such statement is not conveyed and taken at a fair valuation; but only the officer or officers who sign the statement shall be so liable. The president, directors and other officers shall be so liable. Fifth, For signing any certificate which is required by law knowing it to be false; but only the officer or officers who have knowledge thereof shall be liable. Sixth, For debts contracted before the original capital has been fully paid in and the certificate of such payment has been filed in accordance with the provisions of section forty-three." ¹²⁶

"The members or stockholders in any corporation which is subject to the provisions of this chapter shall be jointly and severally liable for its debts or contracts in the following cases,

¹²⁵ *Ibid.* § 39.

¹²⁶ Mass. Rev. L. ch. 110, § 58.

and not otherwise: First, For such as may be contracted before the original capital is fully paid in; but only those stockholders who have not paid in full the par value of their shares, and those who have purchased such shares with knowledge of the fact, shall be liable for such debts. Second, For the payment of all debts existing at the time when the capital is reduced, to the extent of the amounts withdrawn and paid to stockholders. Third, If special stock is created under the provisions of section thirty-six, the general stockholders shall be liable for all debts and contracts until the special stock shall have been fully redeemed. Fourth, For all money due to operatives for services rendered within six months before demand made upon the corporation, and its neglect or refusal to make payment. Any such member or stockholder who pays, on a judgment or otherwise, more than his proportion of any such debt shall have a claim for contribution against the other members or stockholders." ¹²⁷

"A stockholder or officer in such corporation shall not be held liable for its debts or contracts unless a judgment has been recovered against it and it has neglected for thirty days after demand made on execution to pay the amount due, with the officer's fees, or to exhibit to him real or personal property of the corporation subject to be taken on execution, sufficient to satisfy the same, and the execution has been returned unsatisfied." ¹²⁸

"The clerk or other officer who has charge of the records of any such corporation against which judgment has been so recovered and execution so issued and returned unsatisfied, upon reasonable request of the judgment creditor or of his attorney, shall furnish to him a certified list of the names of all persons who were officers and stockholders in such corporation at the time of the commencement of the suit in which judgment was recovered." ¹²⁹

¹²⁷ *Ibid.* § 59.

¹²⁸ *Ibid.* § 60.

¹²⁹ *Ibid.* § 61.

"After the execution has been so returned, any creditor may file a bill in equity, in behalf of himself and all other creditors of the corporation, against it and all persons who were stockholders therein at the time of the commencement of the suit in which such judgment was recovered, or against all the officers who were liable for its debts and contracts, for the recovery of the money due from the corporation to himself and the other creditors for which the stockholders or officers may be personally liable by reason of any act or omission on the part of the corporation or that of its officers or any of them, setting forth the judgment and proceedings thereon, and the grounds upon which it is expected to charge the stockholders or officers personally." ¹³⁰

"Such sums as may be decreed to be paid by the stockholders in such suit in equity shall be assessed upon them in proportion to the amounts of stock held by them respectively at the time when the suit in which said judgment was recovered was begun, but no stockholder shall be liable to pay a larger sum than the amount of stock held by him at that time at its par value." ¹³¹

"The estates and funds in the hands of executors, administrators, guardians, conservators or trustees shall be liable to no greater extent than the testator, intestate, ward or person interested in the trust fund would have been, if living and competent to act and hold the stock in his own name." ¹³²

"If a defendant dies during the pendency of such a suit in equity, it shall not abate thereby; but his estate in the hands of his executor or administrator shall be liable to the same extent as he would be if living. Such executor or administrator may voluntarily appear and become a party to the suit or may be summoned by the plaintiff. Such suit in equity shall not be dismissed by the plaintiff without an order of court and such notice to other creditors as the court may find

¹³⁰ *Ibid.* § 62.

¹³¹ *Ibid.* § 63.

¹³² *Ibid.* § 64.

reasonable under the circumstances.¹³³ No such suit in equity shall be abated by reason of the non-joinder of persons liable as defendants unless the plaintiff, after being notified by plea or answer of the existence of such persons, unreasonably neglects to make them parties."¹³⁴

"If, in a suit against a corporation which is established by the laws of this commonwealth, it appears to the court that one of the objects of the suit is to obtain a judgment against the corporation in order to enforce an alleged liability of a person who has been or is a stockholder or officer thereof, any such stockholder or officer may be permitted, on petition, to defend such suit, and in such case the court may require of him or of a person in his behalf, a bond with sufficient surety or sureties, conditioned to pay to the plaintiff all costs which may accrue and be taxed to him after the filing of said petition."¹³⁵

§ 402. Michigan.

"The stockholders of all corporations organized or existing under this act shall be individually liable for all labor performed for such corporations, which said liability may be enforced against any stockholder by action founded on this statute, at any time after an execution shall be returned unsatisfied, in whole or in part, against the corporation, or at any time after an adjudication in bankruptcy against said corporation, and the amount due on such execution shall be *prima facie* evidence of the amount recoverable, with costs against any such stockholder; and if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the responsible stockholders to contribute their equal part of the sum so paid by him as aforesaid, and may sue them, jointly or severally, or any number of them, and re-

¹³³ *Ibid.* §§ 65, 66.

¹³⁴ *Ibid.* § 67.

¹³⁵ *Ibid.* § 68.

"After the execution has been so returned, any creditor may file a bill in equity, in behalf of himself and all other creditors of the corporation, against it and all persons who were stockholders therein at the time of the commencement of the suit in which such judgment was recovered, or against all the officers who were liable for its debts and contracts, for the recovery of the money due from the corporation to himself and the other creditors for which the stockholders or officers may be personally liable by reason of any act or omission on the part of the corporation or that of its officers or any of them, setting forth the judgment and proceedings thereon, and the grounds upon which it is expected to charge the stockholders or officers personally." ¹³⁰

"Such sums as may be decreed to be paid by the stockholders in such suit in equity shall be assessed upon them in proportion to the amounts of stock held by them respectively at the time when the suit in which said judgment was recovered was begun, but no stockholder shall be liable to pay a larger sum than the amount of stock held by him at that time at its par value." ¹³¹

"The estates and funds in the hands of executors, administrators, guardians, conservators or trustees shall be liable to no greater extent than the testator, intestate, ward or person interested in the trust fund would have been, if living and competent to act and hold the stock in his own name." ¹³²

"If a defendant dies during the pendency of such a suit in equity, it shall not abate thereby; but his estate in the hands of his executor or administrator shall be liable to the same extent as he would be if living. Such executor or administrator may voluntarily appear and become a party to the suit or may be summoned by the plaintiff. Such suit in equity shall not be dismissed by the plaintiff without an order of court and such notice to other creditors as the court may find

¹³⁰ *Ibid.* § 62.

¹³¹ *Ibid.* § 63.

¹³² *Ibid.* § 64.

reasonable under the circumstances.¹³³ No such suit in equity shall be abated by reason of the non-joinder of persons liable as defendants unless the plaintiff, after being notified by plea or answer of the existence of such persons, unreasonably neglects to make them parties."¹³⁴

"If, in a suit against a corporation which is established by the laws of this commonwealth, it appears to the court that one of the objects of the suit is to obtain a judgment against the corporation in order to enforce an alleged liability of a person who has been or is a stockholder or officer thereof, any such stockholder or officer may be permitted, on petition, to defend such suit, and in such case the court may require of him or of a person in his behalf, a bond with sufficient surety or sureties, conditioned to pay to the plaintiff all costs which may accrue and be taxed to him after the filing of said petition."¹³⁵

§ 402. Michigan.

"The stockholders of all corporations organized or existing under this act shall be individually liable for all labor performed for such corporations, which said liability may be enforced against any stockholder by action founded on this statute, at any time after an execution shall be returned unsatisfied, in whole or in part, against the corporation, or at any time after an adjudication in bankruptcy against said corporation, and the amount due on such execution shall be *prima facie* evidence of the amount recoverable, with costs against any such stockholder; and if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the responsible stockholders to contribute their equal part of the sum so paid by him as aforesaid, and may sue them, jointly or severally, or any number of them, and re-

¹³³ *Ibid.* §§ 65, 66.

¹³⁴ *Ibid.* § 67.

¹³⁵ *Ibid.* § 68.

cover in such action the amount due from the stockholder or stockholders so sued." ¹³⁶

"If the capital stock of any such corporation shall be withdrawn, and refunded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be jointly and severally liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to him or them respectively." ¹³⁷

"If any of the directors of any such corporation shall wilfully neglect or refuse to make and deposit the [annual] report required by this section, within the time herein specified, they shall each be liable for all the debts of such corporation contracted since the filing of the last annual or special report, and subject to a penalty of twenty-five dollars, and in addition thereto the sum of five dollars for each and every secular day after the first day of March in each year during the pendency of such neglect or refusal, which penalty shall be for the use and benefit of the general fund of this State." ¹³⁸

"If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, knowing such corporation to be insolvent, or that the payment of such dividend would render it so, the directors assenting thereto shall be jointly and severally liable in an action founded on this statute, for all debts due from such corporation at the time of paying or declaring such dividend. ¹³⁹ If any corporation organized or existing under this act shall violate any of its provisions, the directors ordering or assenting to such violation, shall be jointly and severally liable in an action founded on this statute, for all debts contracted after such violation as aforesaid, to the extent of three times

¹³⁶ Mich. 1903, Act 232, § 29.

¹³⁷ *Ibid.* § 21.

¹³⁸ *Ibid.* § 12.

¹³⁹ *Ibid.* § 22.

the amount paid in on the stock standing in the name of such director in any such corporation." ¹⁴⁰

§ 403. Minnesota.

"Each stockholder in any corporation (excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him," ¹⁴¹ that is, to the amount of his stock in addition to the amount of the original subscription. ¹⁴²

"The private property of each stockholder in any corporation formed as herein provided is liable for corporate debts in the following cases: First, for all unpaid instalments on stock owned by him, or transferred for the purpose of defrauding creditors; second, For a failure by the corporation to comply substantially with the provisions aforesaid as to organization and publicity; third, When he personally violates any of the provisions of this title in the transaction of any business of the corporation as officer, director or member thereof, or is guilty of any fraud, unfaithfulness or dishonesty in the discharge of any official duty." ¹⁴³ This liability extends to debts contracted before the stockholder acquired his stock. ¹⁴⁴

"The private property of no stockholder shall be levied on under the preceding section, unless such stockholder, as well as the corporation, is duly served with process in the action, and the issue involving his individual liability as aforesaid raised and determined; and in no case whatever shall such property be levied on while sufficient corporate property can be found to satisfy the execution or any part thereof." ¹⁴⁵

¹⁴⁰ *Ibid.* § 23.

¹⁴¹ Minn. Const. Art. 10, § 3.

¹⁴² *Willis v. St. Paul Sanitation Co.*, 53 Minn 370, 50 N. W. 1110.

¹⁴³ Minn. Gen. Stat. § 2600.

¹⁴⁴ *Olson v. Cook*, 57 Minn. 552, 59 N. W. 635.

¹⁴⁵ Minn. Gen. Stat. § 2601.

The officer holding an execution must make demand of some officer of the corporation; and if he does not satisfy it or point out corporate property that may be levied on, the officer may make levy upon the private property of the stockholders.¹⁴⁶

Elaborate provisions are made for the enforcement of the stockholder's liability in case of insolvency of the corporation or the appointment of a receiver.¹⁴⁷ The assignee, receiver, or any creditor files a petition in the district court; if it is shown that the assets that can be collected in a reasonable time are insufficient to pay the debts, the court orders an assessment upon each stockholder. This assessment is conclusive upon all parties liable on account of holding stock. The receiver may then sue any stockholder severally, in or outside the State, for the amount of his assessment. An additional assessment may be made if necessary.

"If the capital stock of any such corporation shall be withdrawn and refunded to the stockholders, before the payment of all the debts of the corporation for which such stock would have been liable, stockholders of such corporation shall be liable to any creditor of such corporation in an action founded on this statute to the amount of the sum refunded to them respectively as aforesaid; but if any stockholder shall be compelled, by any such action, to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the stockholders to whom any part of said stock has been refunded to contribute their proportional part of the sum paid by him as aforesaid."¹⁴⁸ "If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, knowing such corporation to be insolvent, or that such dividend would render it so, the directors assenting thereto shall be jointly and severally liable, in an action

¹⁴⁶ *Ibid.* § 2602.

¹⁴⁷ Minn. 1899, ch. 272.

¹⁴⁸ Minn. Gen. Stat. § 2822.

founded on this statute, for all debts due from such corporation at the time of such dividend." ¹⁴⁹

"If the president, directors or secretary of any such corporation shall intentionally neglect or refuse to comply with the provisions of this act, and to perform the duties therein required of them respectively, such of them as so neglect or refuse shall be jointly and severally liable, in an action founded on this statute, for all debts of such corporation contracted during the period of any such neglect or refusal.¹⁵⁰ If any corporation organized and established under the authority of this act shall violate any of its provisions, and shall thereby become insolvent, the directors ordering or assenting to such violation shall be jointly and severally liable in an action founded on this statute, for all debts contracted after such violation as aforesaid." ¹⁵¹

§ 404. Mississippi.

"Every corporation may sue any subscriber for stock therein for calls or installments that may remain due, or his stock may be sold for such calls or installments in the manner prescribed in the by-laws; and if a mode be not presented therein for the sale of stock, then the same may be sold by resolution of the Board of Directors, by any person who may be authorized by such resolution, to the highest bidder, on three weeks' notice published in some convenient newspaper; but the subscriber whose stock may be sold shall nevertheless be liable for any deficiency of the sale under the amount due on the stock. The amount received shall be placed to the credit of the stock sold and inure to the benefit of the purchaser, who, by such purchase, shall become a stockholder in the place of the original subscriber." ¹⁵²

"In all corporations each stockholder shall be individually

¹⁴⁹ *Ibid.* § 2823.

¹⁵⁰ *Ibid.* § 2824.

¹⁵¹ *Ibid.* § 2825.

¹⁵² Miss. Code, § 843.

liable for the debts of the corporation contracted during his ownership of stock for the amount or balance that may remain due or unpaid for the stock subscribed for by him, and may be sued by any creditor of the corporation; and such liability shall continue for one year after the sale or transfer of the stock. The stock in all corporations shall be transferable by the indorsement and delivery of the stock certificate and the registry of such transfer in the books of the corporation; but the legal title to the stock and the beneficial interest therein shall remain in the person appearing to be the owner by the books of the corporation, as to creditors, until after a *bona fide* transfer has been made on the books.”¹⁵³

“No part of the capital stock in any corporation shall be withdrawn or diverted from its purpose, nor a dividend declared, when the company is insolvent, or would be rendered insolvent by such withdrawal or the payment of such dividend; and the directors who assented to such withdrawal, or declared and paid such dividend, as well as the stockholders who received it, shall be jointly and severally liable to creditors whose debts then existed, to the extent of such withdrawal or dividend and interest.¹⁵⁴ The amount of debts which any manufacturing or trading corporation or company may contract or owe shall not exceed the amount of its capital stock paid in; and in case the debts exceed that amount the directors who contracted such debts shall be individually liable for the excess over the amount of capital stock, and may be sued therefor by any creditor, whether the debts be due at the time of suit brought or not, if such creditor were without notice or knowledge of the excess at the time his debt was made.”¹⁵⁵

§ 405. Missouri.

The Constitution provides that “in no case shall any stock-

¹⁵³ *Ibid.* § 844.

¹⁵⁴ *Ibid.* § 852.

¹⁵⁵ *Ibid.* § 853.

holder be individually liable in any amount over or above the amount of stock owned by him or her." ¹⁵⁶ The liability for unpaid subscription is enforced by the following provisions: "If any execution shall have been issued against any corporation, and there cannot be found any property or effects whereon to levy the same, then such execution may be issued against any of the stockholders to the extent of the amount of the unpaid balance of such stock by him or her owned: *Provided, always*, that no execution shall issue against any stockholder except upon an order of the court in which the action, suit or other proceedings shall have been brought or instituted, made upon motion in open court, after sufficient notice, in writing, to the person sought to be charged; and, upon such motion, such court may order execution to issue accordingly; *and provided further*, that no stockholder shall be individually liable in any amount over and above the amount of stock owned."¹⁵⁷ The clerk or other officer having charge of the books of any corporation, on demand of any officer holding any execution against the same, shall furnish the officer with the names, places of residence, so far as to him known, and the amount of liability of every person liable as aforesaid.¹⁵⁸ If any company formed under this chapter dissolve, leaving debts unpaid, suits may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the company in such suit; and if judgment be rendered and execution satisfied, the defendant or defendants may sue all who were stockholders at the time of the dissolution, for the recovery of the portion of such debt for which they were liable, and the execution upon the judgment shall direct the collection to be made from the property of each stockholder respectively; and if any number of stockholders, defendants in the case, shall not have property enough to satisfy his or their portion of the execution,

¹⁵⁶ Mo. Const. Art. 12, § 9.

¹⁵⁷ Mo. Rev. Stat. § 985.

¹⁵⁸ *Ibid.* § 986.

then the amount of deficiency shall be divided equally amongst all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of such stock owned by the plaintiff at the time the company dissolved." ¹⁵⁹

"If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted as long as they shall respectively continue in office: *Provided*, that the amount for which they shall be liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall file their objection, in writing, with the clerk or other officer of the corporation having charge of the books, they shall be exempted from the said liability." ¹⁶⁰

"All bodies corporate, by any suit at law in any court in this State, may sue for, recover and receive from their respective members all arrears or other debts, dues and other demands which now are or hereafter may be owing to them, in like mode, manner and form as they might sue for, recover and receive the same from any person who might not be one of their body, any law, usage or custom to the contrary thereof notwithstanding." ¹⁶¹

"No person holding stock in the corporation, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder in such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly. And the estate and funds in the hands of such executors, adminis-

¹⁵⁹ *Ibid.* § 987.

¹⁶⁰ *Ibid.* § 983.

¹⁶¹ *Ibid.* § 984.

trators, guardians or trustees, shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name." ¹⁶²

§ 406. Montana.

"The stockholders of every corporation shall be severally and individually liable to the creditors of the corporation in which they are stockholders, to the amount of unpaid stock held by them respectively, for all acts and contracts made by such corporation, until the whole amount of capital stock subscribed for shall have been paid in." ¹⁶³ "When the articles of incorporation provide that the stock shall be assessable, the directors may, for the purposes of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof in the manner and form and to the extent provided herein. No one assessment must exceed five per cent. of the amount of the capital stock named in the articles of incorporation, except that if the whole capital of a corporation has not been paid up and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or, if a less amount is sufficient, then it may be for such a percentage as will raise the amount." ¹⁶⁴

"The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase the capital stock, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same

¹⁶² *Ibid.* § 1324.

¹⁶³ Mont. Civ. Code, § 470.

¹⁶⁴ *Ibid.* §§ 490, 491.

may have happened (except those who may have caused their dissent therefrom to be entered at large in the minutes of the directors at the time, or were not present when the same did happen) are, in their individual and private capacity, jointly and severally liable to the corporation and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.”¹⁶⁵

“No loan of money shall be made by any corporation to any stockholder therein, and if any such loan shall be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned.”¹⁶⁶

“Every corporation having a capital stock shall, annually, and within twenty days from and after the thirty-first day of December, make a report which shall state the amount of the capital and proportion thereof actually paid in and the amount of existing debts, and which shall be signed by the president, and a majority of the directors inclusive of the president and shall be verified by the oath of the president, vice president or secretary of such corporation; and shall be filed in the office of the clerk of the county where the principal office or place of business of the corporation shall be located. If any such corporation shall fail so to do, all the directors of the corporation shall be jointly and severally liable for all debts of the corporation then existing or which may be thereafter contracted until such report shall be made and filed; *Provided, however,* that if within ten days after such failure, a director or directors

¹⁶⁵ *Ibid.* § 438.

¹⁶⁶ *Ibid.* § 476.

shall make and file as aforesaid an affidavit or affidavits stating that the failure was due to no fault or neglect of his, or theirs, and stating also that within the said twenty days, he or they requested the president or sufficient number of the other directors whose residence was known to the affiants to join with them in making report, such director or directors shall not be liable under this section. If the required report be made and filed after the time herein specified the directors shall not, on account of the prior failure to make report, be liable for the debts thereafter contracted.”¹⁶⁷

“The officers and stockholders of every banking corporation formed under the provisions of this title are individually liable for all debts contracted during the term of their being officers or stockholders of such corporation equally and ratably to the extent of their respective shares of stock in such corporation, except that when any stockholder shall sell and transfer his stock such liability shall cease at the expiration of six months from and after the date of such sale and transfer.”¹⁶⁸ The liability of stockholders in trust deposit and security companies is similar,¹⁶⁹ as is that of the officers and stockholders of savings bank corporations.¹⁷⁰

§ 407. Nebraska.

“In all cases of claims against corporations and joint stock associations, the exact amount justly due shall be first ascertained, and after the corporate property shall have been exhausted the original subscribers thereof shall be individually liable to the extent of their unpaid subscription, and the liability for the unpaid subscription shall follow the stock.”¹⁷¹ “Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors over

¹⁶⁷ *Ibid.* § 451.

¹⁶⁸ *Ibid.* § 578.

¹⁶⁹ *Ibid.* § 601.

¹⁷⁰ *Ibid.* § 628.

¹⁷¹ Neb. Const. § 271.

and above the amount of stock by him held to an amount equal to his respective stock or shares so held, for all its liabilities accruing while he remains such stockholder; and all banking corporations shall publish quarterly statements under oath of their assets and liabilities." ¹⁷²

"If any corporation fail to comply substantially with the provisions of this subdivision, in relation to giving notice, and other requisitions of organization, after the assets of the corporation are first exhausted, then the property of any stockholder shall be liable for the corporate debts to the extent of the unpaid subscription of any stockholder to the capital stock of such corporation, and in addition thereto, the amount of capital stock owned by such individual." ¹⁷³

"Every corporation hereafter created shall give notice annually, in some newspaper printed in the county or counties in which the business is transacted, and in case there is no newspaper printed therein, then in the nearest paper in the state, of the amount of all the existing debts of the corporation, which notice shall be signed by the president and a majority of the directors; and if any corporation shall fail to do so after the assets of the corporation are first exhausted then all the stockholders of the corporation shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be contracted before such notice is given to the extent of the unpaid subscription of any stockholder to the capital stock of such corporation, and in addition thereto the amount of capital stock owned by such individuals." ¹⁷⁴

§ 408. Nevada.

It is provided in the Constitution that "dues from corporations shall be secured by such means as may be prescribed by law; provided that corporators in corporations formed

¹⁷² *Ibid.* § 274.

¹⁷³ Neb. Comp. Stat. § 1842.

¹⁷⁴ *Ibid.* § 1839.

under the laws of this State shall not be individually liable for the debts or liabilities of such corporation." ¹⁷⁵

"Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or its articles of incorporation, or such proportion of that sum as shall be required to satisfy such debts and obligations, but no more. No suit shall be brought against any Director or stockholder for any debt of a corporation organized as aforesaid, of which he is such Director or stockholder, until judgment be obtained therefor against such corporation and execution thereon returned unsatisfied." ¹⁷⁶

"No person holding stock in any corporation incorporated in this State as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally liable or subject to any liability as a stockholder in or of such corporation (provided the transfer and the books of the company show the nature of the transfer and that the said stock is held in such fiduciary capacity or as a pledge and as security merely), but the person pledging such stock shall be considered as holding and owning the same, and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or the person interested in such fund would have been had he been living and competent to act and hold the stock in his own name." ¹⁷⁷

"No action or proceeding shall be maintained by any creditor of any corporation, nor by said corporation, nor by any other party or person in any Court of this State against any stockholder, officer or Director of any domestic corpo-

¹⁷⁵ Nev. Const. Art. 8, § 3.

¹⁷⁶ Nev. 1903, ch. 121, § 31.

¹⁷⁷ *Ibid.* § 32.

ration for the purpose of enforcing any statutory personal liability of such stockholder, officer or Director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the Statutes or laws of the United States or of any other State, Territory, colony or foreign country.”¹⁷⁸

“It shall not be lawful for the Trustees or Directors to make any dividend except from the net profits arising from the business of the corporation; nor to divide, withdraw, nor in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock, unless in the manner prescribed in this Act, or in accordance with the provisions of the certificate or articles of incorporation; and in case of any violation of the provisions of this section, the Directors or Trustees under whose administration the same may have happened, except those who may have caused their dissent thereto to be entered at large on the minutes of the Board of Directors or Trustees at the time, shall in their individual and private capacities, be jointly and severally liable to the corporation, and the creditors thereof, to the full amount so divided, withdrawn or reduced, or paid out; *provided*, that this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain, after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter; *provided, also*, that this section shall not prevent the retirement or conversion of either stock or bonds or the distribution of the earnings or accumulations of the corporation as provided for in the articles or certificate of incorporation, original or amended.”¹⁷⁹

“If the Directors or officers of any corporation organized under the provisions of this Act shall knowingly cause to be published, or given out, any written statement or report of

¹⁷⁸ *Ibid.* § 33.

¹⁷⁹ *Ibid.* § 68.

the condition or business of the corporation that is false in any material respect, the officers and Directors causing such report or statement to be published, or given out, or assenting thereto, shall be jointly and severally individually liable for any loss or damage resulting therefrom.¹⁸⁰ If at any time the Clerk, Secretary, agent or other officer or employee having charge of any book required by this Act to be kept, shall make any false entry therein, or neglect to exhibit the same, or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry, as provided in Section 71 of this Act, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of one hundred dollars, and all damages resulting therefrom, to be rewarded in an action for debt in any court having competent jurisdiction.”¹⁸¹

§ 409. New Hampshire.

“The officers and stockholders of corporations whose object is a dividend of profits, except banks, shall be individually liable for the debts and contracts of the corporation, in the cases and to the extent specified in this chapter and not otherwise.”¹⁸²

“No loan of money shall be made by any such corporation, excepting banks, to any stockholder therein. No dividend shall be made, and no part of the capital stock shall be withdrawn or refunded, to any of the stockholders, when the property of the corporation is insufficient or will be thereby rendered insufficient for the payment of all its debts. No corporation, banks and insurance companies excepted, shall contract debts or incur liabilities exceeding one half the value of its property. If a corporation, by vote or by its officers, shall violate either of the provisions of the three preceding sections, the directors shall be individually liable, to the

¹⁸⁰ *Ibid.* § 74.

¹⁸¹ *Ibid.* § 75.

¹⁸² N. H. Pub. Stat. ch. 150, § 1.

amount of such loan, dividend, or sum refunded or withdrawn, or of the excess of debts and liabilities above half the value of its property, for the debts and contracts of the corporation then existing or contracted while they remain in office. If a director, being absent at the time of the acts done in violation of the foregoing provisions, shall not have advised or consented thereto, or, being present, shall have objected thereto and filed his objections in writing with the clerk, at the time, he shall be exempt from such liability.”¹⁸³

“A stockholder who shall unlawfully receive a loan from the corporation, or a sum unlawfully withdrawn or refunded from the capital stock thereof, or who shall knowingly accept or receive a dividend unlawfully made, shall, to the amount by him received, be individually liable for the debts of the corporation then existing, or afterwards contracted, until the same is repaid, or paid to the creditors of the corporation. Every stockholder, except stockholders in banks and railroads, shall be liable for all debts and contracts of the corporation until the whole amount of the capital fixed and limited by the corporation shall have been paid in, and a certificate thereof, under oath, signed by the treasurer and a majority of the directors, has been filed and recorded by the clerk of the city or town where such corporation has its principal place of business, and not afterward, except in the cases specified in the preceding section. Stockholders in railroads shall be liable only to the amount of the par value of their stock therein and not otherwise. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock.”¹⁸⁴

“The treasurer of every railroad corporation and the clerk of every other dividend-paying corporation, except banks, until its capital stock is fully paid in and a certificate thereof filed and recorded, shall annually, in the month of May, cause

¹⁸³ *Ibid.* §§ 2-6.

¹⁸⁴ *Ibid.* §§ 7-9.

to be filed and recorded in the office of the clerk of the town or city in which the corporation has its principal place of business, a list of the names and places of residence of all its stockholders, certified under oath. Any person whose name shall be returned on the list shall be deemed a stockholder in the corporation until he shall cause to be filed and recorded by the town clerk a certificate of the transfer of all his stock, the time of such transfer, and the names and places of residence of the persons to whom he sold, signed by the treasurer or clerk of the corporation, which certificate shall be made and delivered to him by such treasurer or clerk upon request, at any time after the transfers are delivered to him for record." ¹⁸⁵

"The directors and treasurer of every corporation, except banks, whose object is a dividend of profits, within thirty days after the whole amount of the capital stock fixed and limited by the corporation shall have been paid in, shall make and subscribe a certificate, under oath, of that fact and cause it to be recorded in the office of the clerk of the city or town where the corporation has its principal place of business; and if they neglect so to do, they shall be liable for all the debts of the corporation contracted after the expiration of the said thirty days and before such certificate shall be so made and recorded." ¹⁸⁶

"Every such corporation, except insurance companies, railroad corporations, banks, and loan and building associations, shall annually, in the month of May, make a return in writing, signed by and under oath of its treasurer and a majority of its directors, to the secretary of state and to the clerk of the town in which its principal business is carried on, if in this state, of the amount of all assessments voted by the corporation and actually paid in, the amount of all debts due to and from the corporation, and the value of all the property and assets of the corporation, so far as the same can be ascertained as existing on the first day of May; and if any such corporation

¹⁸⁵ *Ibid.* §§ 10, 11.

¹⁸⁶ *Ibid.* § 14.

shall fail so to do, the treasurer and directors shall be individually liable for all the debts and contracts of the corporation then existing, or which shall be contracted, until the return is made." ¹⁸⁷

"If any certificate, return, or notice made or given in pursuance of the provisions of this chapter shall be false in any material representation, all the officers who signed the same, knowing it to be so or without due inquiry, shall be individually liable for all the debts of the corporation contracted while they were in office." ¹⁸⁸

"No person holding stock as executor, administrator, guardian, or trustee, and no person holding stock as collateral security, shall be thereby personally subject to any liabilities as a stockholder; but the person pledging the stock shall be so liable, and the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable to the same extent as a holder thereof in his own right would be liable." ¹⁸⁹

"Any stockholder who has voluntarily paid a debt or liability of a corporation, after demand for payment thereof, which he was legally holden to pay, may have contribution by a bill in equity against the other stockholders for such sum as he ought equitably to recover; but no director, officer, or stockholder who advised or consented to any act in violation of the provisions of this chapter shall recover against any stockholder who did not advise or consent thereto. Any officer of a corporation who shall have paid a debt or liability of the corporation for which he is made liable by the provisions of this chapter, may recover the amount so paid in a bill against the corporation, but he shall have no claim against the stockholders individually therefor." ¹⁹⁰

"The only remedy to enforce the payment of a debt of a

¹⁸⁷ *Ibid.* § 16.

¹⁸⁸ *Ibid.* § 19.

¹⁸⁹ *Ibid.* § 20.

¹⁹⁰ *Ibid.* §§ 21, 22.

corporation against the individual stockholders thereof shall be a bill in chancery. No bill shall be filed until sixty days after a legal demand of payment of the debt whose payment is sought to be enforced shall have been made upon the corporation." ¹⁹¹

"Whenever payment of a debt of a corporation shall be legally demanded, it shall be the duty of the officers and stockholders thereof forthwith to pay and discharge the same with the funds of the corporation, or to expose unincumbered personal property of the corporation sufficient to satisfy the same with costs of suit, so that it may be attached in a suit of the creditor against the corporation; and if such property be thus exposed, no suit shall be maintained against the stockholders. Upon demand of payment of debt of a corporation being made, if the same shall not at once be paid, or unincumbered personal property sufficient to satisfy it be exposed, the officers of the corporation shall forthwith call a meeting of the stockholders to provide means for its payment, by assessments upon themselves or otherwise, within sixty days from the date of the demand. If an officer whose duty it may be to call such meeting shall unreasonably neglect or refuse to call the same, he shall forfeit one thousand dollars, to be recovered in an action of debt by any person injured." ¹⁹²

"In a suit against the stockholders of a bank or banking association for the non-payment of its bills, the bill shall be so framed as to embrace all bank bills holden by the creditor at the time of its being filed; and averments that such bills were issued from and put in circulation by the bank or banking association, that the plaintiff was at the time of demand of payment and still is the holder thereof, and a general statement of the number and denominations of the bills, shall be sufficient setting forth of the liability of the bank or banking association to pay or redeem the bills, and a sufficient description of them; and the stockholders may be described in

¹⁹¹ *Ibid.* ch. 151, §§ 1, 2.

¹⁹² *Ibid.* §§ 3, 4.

the bill as such, by their names and places of residence without further description or addition." ¹⁹³

§ 410. New Jersey.

"Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or such proportion of that sum as shall be required to satisfy such debts and obligations." ¹⁹⁴ This liability may be enforced by a creditor's bill,¹⁹⁵ or by a receiver.¹⁹⁶

"The directors of a corporation shall not make dividends except from its surplus, or from the net profits arising from the business of such corporations, nor shall they divide, withdraw, or in any way pay to the stockholders or any of them, any part of the capital stock of such corporation, or reduce its capital stock except as authorized by law; in case of any willful or negligent violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or who not then being present, shall have caused their dissent therefrom to be so entered upon learning of such action, shall jointly and severally be liable at any time within six years after paying such dividend, to the stockholders of such corporation, severally and respectively, to the full amount of any loss sustained by such stockholders, or in case of insolvency to the corporation or its receiver to the full amount of any loss sustained by the corporation, by reason of such withdrawal, division or reduction." ¹⁹⁷

¹⁹³ *Ibid.* § 5.

¹⁹⁴ N. J. Corp. Supp. 21.

¹⁹⁵ *Bickley v. Schlag*, 46 N. J. Eq. 533, 20 Atl. 250.

¹⁹⁶ *Cumberland Land Co. v. Clinton Hill Co.*, 57 N. J. Eq. 627, 42 Atl. 585.

¹⁹⁷ N. J. Corp. Supp. § 30, amended 1904, ch. 143, § 1.

This obligation of the directors to the corporation may be enforced at the suit of a stockholder, although the corporation is still solvent, and although the stockholder does not repay the dividend he has received. In such a suit the court said: "A construction which imputes to the legislature the intent to force a solvent corporation into liquidation as a condition of enabling it to recover from its directors the money necessary to make good the impairment of its capital by them, should not be adopted unless such intent is manifest. The apparent object of the provision is to afford protection equally to the corporation and to its creditors, against loss by reason of the illegal act.

"The *words* of the statute give this full measure of protection. For disobedience of its mandate 'the directors shall be jointly and severally liable to the corporation—and to its creditors in the event of its dissolution or insolvency,' to the corporation in any event, to the creditors in the event expressed in the statute. . . .

"To say that a person who has been unwittingly induced to exhaust his principal by the mistaken or fraudulent representation of those to whom he has entrusted it that what has been paid to him is income, suffers no injury, is absurd. To refuse him redress, except upon condition that he return the moneys which he has expended in the belief that his capital was intact—notwithstanding that by such expenditure he is rendered penniless—is to put a premium upon fraud in corporate management." ¹⁹⁸

"When the officers, directors or stockholders of any corporation shall be liable to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action against any one or more of them; and the declaration shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally; or the person to whom they are liable may have his

¹⁹⁸ Appleton v. American Malting Co., (N. J. L.) 54 Atl. 454.

remedy by bill in chancery. Any officer, director or stockholder who shall pay any debt of a corporation for which he is made liable by the provisions of this act, may recover the amount so paid, in an action against the corporation for money paid for its use, in which action only the property of the corporation shall be liable to be taken, and not the property of any stockholder. No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of the corporation of which he is such director or stockholder till judgment be obtained therefor against such corporation and execution thereon returned unsatisfied, but any suit brought against any director or stockholder for such debts shall stay after execution levied, or other proceedings to acquire a lien, until such return shall have been made." ¹⁹⁹

§ 411. New Mexico.

There is no stockholders' liability, beyond the common-law liability for unpaid subscription.

"It shall not be lawful for the directors to make any dividend except from the surplus profits arising from the business of the corporation; nor to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock unless in the manner prescribed in this act; and in case of any violations of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of directors at the time, or were not present when the same did happen, shall in their individual and private capacities be jointly and severally liable to the corporation and the creditors thereof in the event of its dissolution, to the full amount so divided, withdrawn, paid out or reduced: *Provided*, That this section shall not be construed to prevent a division and distribution of the capital stock of the company, which shall remain after

¹⁹⁹ N. J. Corp. Supp. §§ 93-95.

the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter.”²⁰⁰

“The total amount of debts of the corporation shall not at any time exceed the amount of the capital stock; and in case of any excess, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of directors at the time, and except those not present when the same did happen, shall, in their individual and private capacities, be liable jointly and severally, to the said corporation, and in the event of its dissolution, to any of the creditors thereof, for the full amount of such excess.”²⁰¹

“No person holding stock as executor, guardian or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estate and funds in the hands of the executor, administrator, guardian or trustee, shall be liable in like manner, and to the extent as the testator or intestate, or as the ward or person interested in the trust fund would have been if he had been living and competent to act and hold the stock in his own name.”²⁰²

§ 412. New York.

“Every holder of capital stock not fully paid, in any stock corporation, shall be personally liable to its creditors to an amount equal to the amount unpaid on the stock held by him for debts of the corporation contracted while such stock was held by him. . . . The stockholders of every stock corporation shall, jointly and severally, be personally liable for all debts due and owing to any of its laborers, servants, or em-

²⁰⁰ N. Mex. Comp. L. § 428.

²⁰¹ *Ibid.* § 429.

²⁰² *Ibid.* § 430.

ployees other than contractors, for services performed by them for such corporation. Before such laborer, servant, or employee shall charge such stockholder for such services, he shall give him notice in writing, within thirty days after the termination of such services, that he intends to hold him liable, and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services. No person holding stock in any corporation as collateral security, or as executor, administrator, guardian, or trustee, unless he shall have voluntarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder; but the person pledging such stock shall be considered the holder thereof, and shall be liable as stockholder; and the estates and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in the like manner and to the same extent as the testator or intestate, or the ward, or person interested in such trust fund would have been, if he had been living and competent to act and held the same stock in his own name, unless it appears that such executor, administrator, guardian, or trustee voluntarily invested the trust funds in such stocks, in which case he shall be personally liable as a stockholder.”²⁰³

“Every corporation may become a full liability corporation by inserting a statement to that effect in the certificate. In this case the stockholders of the corporation shall be severally individually liable to its creditors for all its debts and liabilities, and may be joined as defendants in any action against it. No execution shall issue against any stockholder individually until execution has been issued against the corporation and returned unsatisfied, and all the stockholders shall contribute a proportionate share, according to the number of shares of stock owned by each, of the amount paid by any stockholder on a judgment recovered against him in-

²⁰³ New York Stock Corp. L. § 54; 1901, ch. 354.

dividually for a debt of the corporation, and he may recover from the other stockholders in the corporation in a joint or several action the proper portion due by them and each of them, of the amount paid by him on any such judgment.”²⁰⁴

“The directors of a stock corporation shall not make dividends except from the surplus profits arising from the business of such corporation; nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or its creditors respectively by reason of such withdrawal, division, or reduction. But this section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the expiration of its charter; nor shall it prevent a corporation from accepting shares of its capital stock in complete or partial settlement of a debt owing to the corporation, which by the board of directors shall be deemed to be bad or doubtful.”²⁰⁵

“No loan of moneys shall be made by any stock corporation except a moneyed corporation, or by any officer thereof out of its funds to any stockholder therein, nor shall any such corporation or officer discount any note or other evidence of debt, or receive the same in payment of any installment or any part thereof due or to become due on any stock in such corporation, or receive or discount any note, or other evidence

²⁰⁴ N. Y. Business Corp. L. § 6.

²⁰⁵ N. Y. Stock Corp. L. § 23.

of debt, to enable any stockholder to withdraw any part of the money paid in by him on his stock. In case of the violation of any provision of this section, the officers or directors making such loan, or assenting thereto, or receiving or discounting such notes or other evidences of debt, shall jointly and severally be personally liable to the extent of such loan and interest for all the debts of the corporation contracted before the repayment of the sum loaned, and to the full amount of the notes or other evidences of debt so received or discounted, with interest from the time such liability accrued." ²⁰⁶

"If any certificate or report made or public notice given by the officers or directors of a stock corporation shall be false in any material representation, the officers and directors signing the same shall jointly and severally be personally liable to any person who has become a creditor or stockholder of the corporation upon the faith of any such certificate, report, notice, or any material representation therein, to the amount of the debt contracted upon the faith thereof if not paid when due, or of the damage sustained by any purchaser of or subscriber to its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such certificate, report, or notice, or of any material representation therein, shall have been communicated either directly or indirectly to the person so becoming a creditor or stockholder, and he became such creditor or stockholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within two years from the time the certificate, report, or public notice shall have been made or given by the officers or directors of such corporation." ²⁰⁷

"No corporation which shall have refused to pay any of its notes or other obligations, when due, . . . shall transfer

²⁰⁶ *Ibid.* § 25.

²⁰⁷ *Ibid.* § 31.

any of its property to any of its officers, directors, or stockholders, directly or indirectly, for the payment of any debt, or upon any other consideration than the full value of the property paid in cash." No transfer of its property in contemplation of insolvency for the purpose of preferring a creditor shall be valid, except that laborers' wages for services shall be entitled to preference. No corporation subject to the banking, insurance or railroad law shall make any assignment in contemplation of insolvency. No stockholder of any such corporation shall make any transfer or assignment of his stock therein to any person in contemplation of its insolvency. "Every director or officer of a corporation who shall violate or be concerned in violating any provisions of this section, shall be personally liable to the creditors and stockholders of the corporation of which he shall be director or an officer to the full extent of any loss they may respectively sustain by such violation." ²⁰⁸

§ 413. North Carolina.

"Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the certificate of incorporation or charter, or such proportion of that sum as shall be required to satisfy such debts and obligations; but no person holding stock in any corporation in this State as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security shall be personally subject to any liability as a stockholder of such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable in like manner,

²⁰⁸ *Ibid.* § 48.

and to the same extent, as the testator or intestate, or the ward, or the person interested in such fund, would have been, had he been living and competent to act and hold the stock in his own name.”²⁰⁹

“The directors of every corporation may, from time to time, make assessments upon the shares of stock subscribed for, not exceeding, in the whole, the par value thereof remaining unpaid; and the sums so assessed shall be paid to the treasurer at such times and by such installments as the directors shall direct, said directors having given thirty days’ notice of the assessment and of the time and place of payment, either personally or by mail, or by publication in a newspaper published in the county where the corporation is established.”²¹⁰

The president and secretary or treasurer are obliged to make a certificate of payment on the shares of the capital stock, and file it with the Secretary of State. “If any of the said officers shall neglect or refuse to perform the duties required of them in the preceding section for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted before the filing of such certificate.”²¹¹

“When any corporation shall decrease the amount of its capital stock as hereinbefore provided, the certificate decreasing the same shall be published for three weeks successively, at least once in each week, in a newspaper published in the county in which the principal office of the corporation is located; the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation shall be jointly and severally liable for all the debts of the corporation contracted before the filing of the said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the

²⁰⁹ N. Car. Gen. Corp. Law of 1901, § 22.

²¹⁰ *Ibid.* § 23.

²¹¹ *Ibid.* § 27.

amount so reduced: *Provided*, no such decrease of capital stock shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted." ²¹²

"No corporation shall declare and pay dividends, except from the surplus or net profits arising from its business, nor when its debts, whether due or not, shall exceed two-thirds of its assets, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of its capital stock, or reduce its capital stock, except according to this act, and in case of any violation of the provisions of this section, the directors under whose administration the same may happen, shall be jointly and severally liable, at any time within six years after paying such dividend, to the corporation and to its creditors, in the event of its dissolution or insolvency, to the full amount of the dividend so paid, or capital stock so divided, withdrawn, paid out or reduced, with interest on the same from the time such liability accrued: *Provided*, that any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered at large on the minutes of the directors, at the time the same was done, or forthwith after he shall have notice of the same." ²¹³

"If any certificate made or public notice given by the officers of any corporation, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the corporation contracted while they were stockholders or officers thereof, as a penalty enforceable in the courts of this State only." ²¹⁴

"When the officers, directors or stockholders of any cor-

²¹² *Ibid.* § 32.

²¹³ *Ibid.* § 33.

²¹⁴ *Ibid.* § 56.

poration shall be liable to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action against any one or more of them.²¹⁵ Any officer, director or stockholder who shall pay any debt of a corporation for which he is made liable by the provisions of this act may recover the amount so paid, in an action against the corporation for money paid for its use, in which action only the property of the corporation shall be liable to be taken and not the property of any stockholder.²¹⁶ No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of the corporation of which he is such director or stockholder till judgment be obtained therefor against such corporation and execution thereon returned unsatisfied, or it shall be made to appear to the court that the corporation has no property available for the satisfaction of said indebtedness."²¹⁷

"It shall be the duty of the Attorney General to bring an action in the Superior Court of the county, as in this Code directed, to restrain by injunction, any corporation from assuming or exercising any franchise, or transacting any business not allowed by its charter; to restrain any person from exercising corporate franchises not granted; to bring directors, managers, and officers of a corporation, or the trustees of funds given for a public or charitable purpose, to an account for the management and disposition of the property confided to their care; to remove such officers or trustees upon proof of gross misconduct; to secure, for the benefit of all interested, the property or funds aforesaid; to set aside and restrain improper alienations thereof, and generally to compel the faithful performance of duty, and prevent all malversations, peculations and waste. And in case of fraud by the president, directors, managers or stockholders, in any corporation, the court shall render personally liable to creditors and others

²¹⁵ *Ibid.* § 90.

²¹⁶ *Ibid.* § 91.

²¹⁷ *Ibid.* § 92.

injured thereby such of the directors and stockholders as may have been concerned in the fraud.”²¹⁸

Each stockholder of any [railroad] company shall be individually liable to the creditors of such company to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such company until the whole amount of the capital stock so held by him shall have been paid to the company, and all the stockholders of any such company shall be jointly and severally liable for the debts due or owing to any of its laborers and servants, other than contractors, for personal services for thirty days’ service performed for such company, but shall not be liable to an action therefor before an execution shall be returned unsatisfied in whole or in part against the corporation, and the amount due on such executions shall be the amount recoverable with costs against such stockholders; before such laborer or servant shall charge such stockholder for such thirty days’ services he shall give him notice in writing within twenty days after the performance of such service that he intends so to hold him liable and shall commence such action therefor within thirty days after the return of such execution unsatisfied as above mentioned; and every such stockholder, against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders in said corporation in ratable proportion to the amount of the stock they shall respectively hold with himself.²¹⁹

§ 414. North Dakota.

“Each stockholder of a corporation is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him. Any creditor of the corporation may institute joint or several actions against any or all of the stockholders of a corporation whose shares have not been fully paid up, and in such action

²¹⁸ *Ibid.* § 107.

²¹⁹ N. Car. Code, § 1940.

the court must ascertain the amount that is unpaid upon the stock held by each stockholder and for which he is liable, and several judgment must be rendered against each in conformity therewith. The liability of each stockholder is determined by the amount unpaid upon the stock or shares owned by him at the time such action is commenced, and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation; but the pledgor, or person, or estate represented is to be deemed the stockholder as respects such liability." ²²⁰

"All the officers of a corporation who consent to the issuance of stock or bonds for labor or property in excess of its actual cash value, or who have knowledge thereof and do not at the time dissent therefrom in writing shall be jointly and severally liable to the creditors of such corporation for the difference

²²⁰ N. Dak. Code, § 2902.

between the actual cash value of such labor or property at the time such stock or bonds were issued and the par value of the stock or bonds issued therefor." ²²¹

"The directors of corporations must not make dividends except from the surplus profits arising from the business thereof; nor must they divide, withdraw or pay to the stockholders, or any of them, any part of the capital stock, nor must they create debts beyond the subscribed capital stock, or reduce or increase the capital stock, except as specially provided by law; provided, however, that the above limitation as to the creation of debts, shall not apply to the policy risks of insurance companies on which no loss has occurred, or the notes, bonds or debentures of any loan or trust company, organized under the provisions of this chapter when the payment of such notes, bonds or debentures shall be secured by the actual transfer of real estate by trust deed or mortgage for the payment of such notes, bonds or debentures, which said real estate so transferred shall be of twice the value of the par value of such notes, bonds or debentures; *provided, further*, that such limitation shall not apply to any loan or trust company's guarantee of payment after transfer of any note, bond or debenture when the same is secured by trust deed or mortgage as above stated. For a violation of the provisions of the last section the directors under whose administration the same may have happened except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen, are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any action against such directors for any sums for which they are made liable by this

²²¹ *Ibid.* § 2878.

section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence." ²²²

"Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice or entry in any of the records or books of the corporation concerning the corporation or its business, which is false in any material representation, shall be liable for all damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable." ²²³

"At a meeting of the stockholders of the corporation called for that purpose by the directors a corporation may issue bonds, as follows: 1. Notice of the time and place of the meeting, stating its object and the amount of bonds to be issued, must be served in the manner provided in the last section. 2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the issuance of bonds. 3. The certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount of bonds to be issued, the amount of stock represented at the meeting and the vote by which the object was accomplished, which certificate shall be filed in the office of the secretary of state, there to be recorded in the book of corporations. A violation of any of the provisions of this section shall render every director, officer and stockholder of the corporation, who had knowledge of such violation and do not assent therefrom and cause his dissent to be entered at large upon the journal of the corporation, jointly and severally liable for all debts so created." ²²⁴

²²² *Ibid.* §§ 2891, 2892.

²²³ *Ibid.* § 2893.

²²⁴ *Ibid.* § 2906.

§ 415. Ohio.

"The constitution of the State lately provided that "the stockholders of a corporation . . . shall be deemed and held liable, in addition to their stock, in an amount equal to the stock by them subscribed or otherwise acquired to the creditors of the corporation to secure the payment of the debts and liabilities of the corporation." The term "stockholders," it is elsewhere provided, shall apply not only to such persons as appear by the books of the corporation to be such, but to any equitable owner of stock, although the stock appears on the books in the name of another."²²⁵ The foregoing constitutional provision has however been repealed and the following substituted for it, which now applies to all obligations created after the adoption of the amendment. "In no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her."²²⁶

"It shall not be lawful for the directors of any corporation organized under the laws of this State to make dividends except from the surplus profits arising from the business of the corporation. Every director who shall violate, or be concerned in violating, [this] provision shall be liable personally to the creditors and stockholders respectively of the corporation of which he shall be a director to the full extent of any loss they may respectively sustain from such violation."²²⁷

A creditor seeking to charge either directors or trustees on account of any liability created by law may file his complaint in any court having jurisdiction. The court shall proceed as in other cases; if necessary it shall cause an account to be taken of the property and obligations of the corporation, and may appoint one or more receivers. If the corporation appears to be insolvent, the court may ascertain the respective liabilities of the directors, officers and stockholders, and en-

²²⁵ Oh. Const. Art. 13, § 3; Stat. §§ 3258, 3259.

²²⁶ Amendment of 1903; See Oh. 1904, p. 390.

²²⁷ Oh. Stat. § 3269, ch. 1, 4 (85 Oh. L. 182).

force the same by its judgment. In all actions where directors or stockholders are made parties, judgment is rendered, and the corporation is insolvent, the court shall give notice to non-resident stockholders. It shall compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much as is necessary. If the debts still remain unsatisfied, the court shall ascertain the amount payable by each officer and stockholder and adjudge the amount payable by each. The receiver may be directed to sue in his own name as receiver, in other jurisdictions, to collect the amount found due from any officer or stockholder.²²⁸

§ 416. Oklahoma.

“Each stockholder of a corporation is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him. Any creditor of the corporation may institute joint or several actions against any of its stockholders that have not wholly paid the capital stock held by him, and in such action the court must ascertain the amount that is unpaid upon the stock held by each stockholder and for which he is liable, and several judgment must be rendered against each in conformity therewith. The liability of each stockholder is determined by the amount unpaid upon the stock or shares owned by him at the time such action is commenced, and such liability is not released by any subsequent transfer of stock. And in no other case shall the stockholders be individually and personally liable for the debts of the corporation. The term ‘stockholder,’ as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor,

²²⁸ 94 Oh. L. 359.

so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation; but the pledgor or person or estate represented, is to be deemed the stockholder as respects such liability." ²²⁹

"The directors of corporations must not make dividends except from the surplus profits arising from the business thereof, nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase their capital stock, except as specially provided by law. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen), are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a

²²⁹ Okla. Stat. § 975.

division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence. Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable." ²³⁰

"The directors of any corporation formed or existing under the laws of this Territory, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form and to the extent provided herein. No assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows: First. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient then it may be for such a percentage as will raise that amount. Second. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided. Third. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper. No assessment must be levied while any portion of a previous one remains unpaid, unless: First. The power of the corporation has been exercised

²³⁰ *Ibid.* §§ 970, 971.

in accordance with the provisions of this article for the purpose of collecting such previous assessment. Second. The collection of the previous assessment has been enjoined; or, Third. The assessment falls within the provisions of either the first, second or third subdivision [above].”²³¹

“The shareholders of every bank organized under this Act shall be additionally liable for the amount of stock owned and no more.”²³²

§ 417. Oregon.

“The stockholders of all corporations and joint-stock companies shall be liable for the indebtedness of said corporation to the amount of their stock subscribed and unpaid, and no more.”²³³

“If the directors of a corporation declare and pay dividends when the corporation is insolvent, or which renders it insolvent, or diminishes the amount of its capital stock, such directors shall be jointly and severally liable for the debts of the corporation then existing or incurred while they remain in office; or if such directors shall, by any official act or conduct, fraudulently induce any person to give credit to such corporation, they shall be liable in like manner to such person for any loss he may sustain thereby; but any director who voted against such dividend or such fraudulent act or conduct, if present, or who thereafter, as soon as the same came to his knowledge, filed his objections thereto, shall be exempt from such liability.”²³⁴

§ 418. Pennsylvania.

In addition to their liability for unpaid subscriptions, stockholders are liable as follows:

“The stockholders in each of said corporations shall be

²³¹ *Ibid.* §§ 985-987.

²³² *Ibid.* § 252.

²³³ Ore. Const. Art. 11, § 3.

²³⁴ Ore. Misc. L. § 3231.

liable, in their individual capacity, to the amount of stock held by each of them, for all work or labor done to carry on the operations of each of said corporations.”²³⁵ In any action or bill in equity to enforce such liability, any one or more of the stockholders claimed to be liable may be joined; and if judgment be given in favor of the claims it shall be given against any stockholder found liable. Execution shall first be levied on any property of the corporation that may be found; the deficiency, or so much as a stockholder is liable to pay, shall be collected of the property of a stockholder. On paying the whole or part of a judgment a stockholder may have that part he has paid assigned to him, with power to enforce it against the corporation, and if it cannot be so collected, then ratably against the other solvent stockholders originally liable. No stockholder shall be personally liable for payment of the debt of the corporation unless suit for collection is brought against such stockholder within six months after it becomes due.”²³⁶

“If part of the capital stock of a company is withdrawn and refunded to the stockholders before the payment of all the debts of the company, contracted previously to the recording of a copy of the vote for that purpose in the office of the recorder of deeds, as prescribed in the preceding section, all the stockholders of the company shall be jointly and severally liable to the payment of such debts.”²³⁷

“The stockholders of any and all corporations under this act shall be personally liable for all sums of money due to laborers, clerks and operatives for services rendered within six months before demand made upon the corporation, and its neglect or refusal to make payment.”²³⁸

“The shareholders of any [bank] shall be individually responsible, equally and ratably, but not one for another, for all

²³⁵ Pa. 1874, P. L. 80, § 14.

²³⁶ *Ibid.* § 15.

²³⁷ Pa. 1874, P. L. 101, § 29, cl. 4.

²³⁸ Pa. 1874, P. L. 102, § 39, cl. 11.

contracts, debts and engagements of such corporation to the amount of their stock therein in addition to the par value of such shares.”²³⁹ “All stockholders in banks, banking companies, saving funds institutions, trust companies, and all other incorporated companies doing the business of banks or loaning and discounting moneys as such in this Commonwealth, shall be personally liable for all debts and deposits in their individual capacity, to double the amount of the capital stock held and owned by each.”²⁴⁰

“If the directors of any company declare any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all thereafter contracted, so long as they respectively continue in office: *provided*, that the amount for which they shall be liable shall not exceed the amount of such dividend, and if any of the directors are absent at the time of making the dividend or object thereto, at said time, and file their objections in writing with the clerk of the company, they shall be exempted from such liability.”²⁴¹ A director compelled under this clause to pay a debt of the corporation is not entitled to subrogation or indemnity from the company.²⁴²

§ 419. Rhode Island.

In the case of ordinary corporations there is no provision for liability of either stockholders or directors beyond that imposed by the common law; that is, for unpaid subscriptions, or for actual fraud. Elaborate statutory provisions, however, have been made for liability of stockholders and directors in manufacturing corporations.

“The members of every incorporated manufacturing company shall be jointly and severally liable for all debts and

²³⁹ Pa. 1876, P. L. 161, § 5.

²⁴⁰ Pa. 1874, P. L. 135, § 1.

²⁴¹ Pa. 1874, P. L. 102, § 39, cl. 5.

²⁴² Kisterbock's Appeal, 51 Pa. 483.

contracts made and entered into by such company, except as hereinafter provided, until the whole amount of the capital stock fixed and limited by the charter of said company, or by vote of the company in pursuance of the charter or of law, shall have been paid in and a certificate thereof shall have been made and recorded in a book kept for that purpose, in the office of the town clerk of the town wherein the manufactory is established, and no longer, except as hereinafter provided.²⁴³ The president and directors, with the treasurer and clerk of such company, within ten days after the payment of the last installment of the capital stock fixed and limited by the charter or by vote of the company, in pursuance of the charter or of law, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president, treasurer and clerk and by a majority of the directors, and they shall, within said ten days, lodge the same to be recorded in the book kept as aforesaid in the office of the town clerk of the town wherein the manufactory shall be established. In case of increase of the capital stock of said companies, like proceedings shall be had as to the amount added and paid in.²⁴⁴ If any of said officers shall refuse or neglect to perform the duties required of them as aforesaid, they shall be jointly and severally liable for all debts of the company contracted after the expiration of said ten days and before such certificate shall be recorded as aforesaid.”²⁴⁵

“If any part of the capital stock of such company shall be withdrawn and refunded to the stockholders before payment of all the debts of the company contracted previously to the recording of the copy of the vote reducing the capital stock, as in the preceding section required, all the stockholders of the company shall be jointly and severally liable for the payment of said last mentioned debts. If the di-

²⁴³ R. I. Gen. L. ch. 180, § 1.

²⁴⁴ *Ibid.* § 2.

²⁴⁵ *Ibid.* § 3.

rectors of any such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing and for all that shall be thereafter contracted so long as they shall respectively continue in office: *Provided*, that the amount for which they shall all be so liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend or shall object thereto and shall file their objection in writing with the clerk of the company, they shall be exempted from such liability. No note or obligation given by any stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock, and no loan of money shall be made by any such company to any stockholder therein; and if any such loan shall be made to a stockholder, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest for all the debts of the company contracted before the repayment of the sum so loaned.”²⁴⁶

“The liability of members of an incorporated manufacturing company provided by section one of this chapter, and of the members of such corporations under other statutory provisions, for the debts of such company hereafter contracted or for obligations hereafter incurred, shall be and hereby is limited to the shares of such members in such corporation paid up to the par value thereof.”²⁴⁷

“The whole amount of the debts which any such corporation shall at any time owe shall not exceed the amount of its capital stock actually paid in; and in case of any excess, the directors under whose administration it shall happen shall be jointly and severally liable, to the extent of such excess, for all the debts of the company then existing, and for all that shall be contracted as long as they shall respectively con-

²⁴⁶ *Ibid.* §§ 5-7.

²⁴⁷ *Ibid.* § 13.

tinue in office, and until the debts shall be reduced to the amount of the capital stock of such company paid in. Any director who shall be absent at the time of contracting any debt contrary to the foregoing provisions, or who shall object thereto, may exempt himself from said liability by forthwith giving notice of the fact to the stockholders at a meeting which he may call for that purpose.” ²⁴⁸

“If any certificate made or any public notice given by the officers of any manufacturing company, in pursuance of the provisions of this chapter, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they were stockholders or officers thereof.” ²⁴⁹

“Whenever any of the officers of any manufacturing company shall be liable, by the provisions of this chapter, to pay the debts of such company or any part thereof, any person to whom they may be so liable may have an action of the case against any one or more of the said officers, and the declaration in such action shall state the claim against the company and the ground on which the plaintiff expects to charge the defendant personally, and such action may be brought, notwithstanding the pendency of an action against the company for the recovery of the same claim or demand, and both of the actions may be prosecuted until the plaintiff shall obtain the payment of his debt and the costs of both actions.” ²⁵⁰

“All proceedings to enforce the liability of a stockholder for the debts of a corporation shall be either by suit in equity, conducted according to the practice and course of equity, or by an action of debt upon the judgment obtained against such corporation, and in any such suit or action such stockholder may contest the validity of the claim upon which the judg-

²⁴⁸ *Ibid.* §§ 15, 16.

²⁴⁹ *Ibid.* § 20.

²⁵⁰ *Ibid.* § 21.

ment against such corporation was obtained, upon any ground upon which such corporation could have contested the same in the action in which such judgment was recovered. Any stockholder who shall, whether voluntarily or by compulsion, pay any debt of the company for which he is made liable by the provisions of this chapter, may recover the amount so paid in an action of the case against the company, in which action the property of the company only shall be liable to be taken and not the person or property of any stockholder of the company; or the person who shall have so paid such debt of the company may proceed in the appellate division of the supreme court in equity, for contribution, against any one or more of the stockholders who were originally liable with him for the payment of said debt, and may recover against each of them their just and equitable proportion thereof. Any officer of a manufacturing company who shall pay any debt of the company, for which he is made liable by the provisions of this chapter, may recover the amount so paid in an action against the company for money paid for their use, in which action the property of the company only shall be liable to be taken and not the person or property of the stockholder. No person shall hereafter be imprisoned or be continued in prison, nor shall the property of any such person be attached, upon an execution issued upon a judgment obtained against a corporation of which such person is or was a stockholder.”²⁵¹

“No person holding stock in any manufacturing company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject, by virtue of such stock, to any liabilities as a stockholder of such company, but the person pledging such stock shall be considered as holding the same and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian and trustee shall be liable in his hands in like manner and to the same

²⁵¹ *Ibid.* §§ 22-25.

extent as the deceased testator or intestate or the ward or person interested in such trust fund would have been if they had respectively been living and competent to act and had held the same stock in their own names.”²⁵²

§ 420. South Carolina.

The stockholders of all insolvent corporations shall be individually liable to the creditors thereof only to the extent of the amount remaining due to the corporation upon the stock owned by them; *Provided* that the stockholders in banks or banking institutions shall be liable to depositors therein in a sum equal in amount to their stock over and above the face value of the same.²⁵³

§ 421. South Dakota.

“Each stockholder of a corporation is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him. Any creditor of the corporation may institute joint and several actions against any of its stockholders that have not wholly paid the capital stock held by him, and in such action the court must ascertain the amount that is unpaid upon the stock held by each stockholder and for which he is liable, and several judgment must be rendered against each in conformity therewith. The liability of each stockholder is determined by the amount unpaid upon the stock or shares owned by him at the time such action is commenced, and such liability is not released by any subsequent transfer of the stock. And in no other case shall the stockholders be individually and personally liable for the debts of the corporation. The term ‘stockholder’ as used in this section shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear

²⁵² *Ibid.* § 26.

²⁵³ S. Car. Const. Art. IX, § 18.

on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation; but the pledgor, or person, or estate represented is to be deemed the stockholder as respects such liability.”²⁵⁴

“The directors of corporations must not make dividends except from the surplus profit arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase their capital stock, except as specially provided by law. For a violation of the provisions of the last section the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations

²⁵⁴ S. Dak. Civ. Code, § 3851.

is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence." ²⁵⁵

"Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice or entry in any of the records or books of the corporation concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable." ²⁵⁶

§ 422. Tennessee.

"The amount of any unpaid stock due from a subscriber to the corporation shall be a fund for the payment of any debts due from the corporation; the transfer of stock by any subscriber does not relieve him from payment, unless his transferee has paid up all or any of the balance due on said original subscription." ²⁵⁷

"Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their liabilities, subjects all officers, stockholders or directors knowingly participating therein to the penalties of a misdemeanor; and moreover to damages at the suit of any person injured thereby.²⁵⁸ The diversion of the funds of the corporation to other objects than those mentioned in the incorporation; the payment of dividends which leave insufficient funds to meet the liabilities of the corpora-

²⁵⁵ *Ibid.* § 3846.

²⁵⁶ *Ibid.* § 3847.

²⁵⁷ Tenn. Code, § 1708.

²⁵⁸ *Ibid.* § 1716.

tion; the keeping of false books or accounts, whereby any one is injured; and the making and publishing of false reports, are such frauds as will subject those actively concerned therein to the penalties of the preceding section.”²⁵⁹

The liability in the case of quarrying, boring and manufacturing corporations, is as follows:

“Any [loan of money made to a stockholder] shall render the directors consenting thereto individually liable for the amount thereof; this liability to extend in favor of innocent stockholders as well as creditors.²⁶⁰ The making of a false statement to be printed as aforesaid shall render all persons assenting thereto individually liable to all persons dealing or trading with said company, upon the faith of said fraudulent statement.²⁶¹ If the indebtedness of said company shall at any time exceed the capital stock paid in, the directors assenting thereto shall be individually liable to the creditors for said excess. The stockholders are jointly and severally liable individually at all times for all moneys due and owing to the laborers, servants, clerks and operatives of the company, in case the company becomes insolvent.²⁶² If the directors declare and pay any dividend when the company is insolvent, or which declaration of a dividend would diminish the amount of the capital stock, they shall be jointly and severally liable to creditors for the amount of dividends thus declared. Any director may avoid liability by voting against the dividend, or by filing his objections in writing as soon as he ascertains a dividend has been made.”²⁶³

§ 423. Texas.

If any stockholder pay more than his due proportion of any debt of the corporation, he may compel contribution

²⁵⁹ *Ibid.* § 1717.

²⁶⁰ *Ibid.* § 1856.

²⁶¹ *Ibid.* § 1857.

²⁶² *Ibid.* § 1858.

²⁶³ *Ibid.* § 1859.

from the other stockholders by action.²⁶⁴ No stockholder shall be liable to pay debts of the corporation beyond the amount unpaid on his stock.²⁶⁵

"If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted, as long as they shall respectively remain in office. The amount for which they shall all be so liable shall not exceed the amount of such dividend; and if any of the directors shall be absent at the time of making the dividend, or shall object thereto at the time such dividend is declared, and shall file their objections in writing with the secretary or other officer of the corporation having charge of the books, they shall be exempted from the said liability."²⁶⁶

§ 424. Utah.

"The property of the corporation and the unpaid stock shall be liable for the debts of the corporation; but the individual property, of any holder of full-paid capital stock of any corporation organized since March eighth, eighteen hundred and ninety-four, or that hereafter may be organized, under the laws of this state, except as otherwise expressly provided in this title, shall not be liable for the corporate obligations, nor shall assessments be levied on such stock for any purpose whatever, except to such extent and in such manner as may be expressly provided in the articles of incorporation."²⁶⁷

"The full-paid capital stock of any corporation organized since March eighth, eighteen hundred and ninety-four, or that may hereafter be organized under the laws of this state, shall

²⁶⁴ Tex. Rev. Stat. Art. 685.

²⁶⁵ *Ibid.* Art. 686.

²⁶⁶ *Ibid.* Art. 670.

²⁶⁷ Utah, Rev. Stat. § 331.

not be assessable for any purpose whatever, except to such extent and in such manner as may be expressly provided in the articles of incorporation; *provided*, that if such stock is made assessable and the manner of levying the assessment is not provided for, it shall be levied in the manner and form hereinafter prescribed." ²⁶⁸

"The board of directors of any corporation, whose capital stock shall not be full-paid, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed and unpaid capital stock thereof in such manner and at such times as may be prescribed in the articles of incorporation, or, if not therein provided for, in the manner and form and to the extent hereinafter prescribed. No assessment shall exceed ten per cent. of the outstanding capital stock of the corporation, unless the corporation is unable to meet its obligations or satisfy the claims of its creditors, in which case the assessment may be for the full amount unpaid upon its capital stock, or for any less amount that may be sufficient to meet such obligations or claims. No assessment shall be levied while a portion of a previous one remains unpaid, unless: 1. The power of the corporation has been exercised in accordance with the provisions of this chapter for the purpose of collecting such previous assessment; 2. The collection of such previous assessment has been enjoined or restrained; or, 3. The assessment falls within the provisions of the next preceding section." ²⁶⁹

"The stockholders in every corporation and joint stock association for banking purposes, in addition to the amount of capital stock subscribed and fully paid by them, shall be individually responsible for an additional amount, equal to the amount of their stock in such corporation, for all debts and liabilities of every kind." ²⁷⁰

²⁶⁸ *Ibid.* § 354.

²⁶⁹ *Ibid.* §§ 355-357.

²⁷⁰ *Ibid.* § 382.

§ 425. Vermont.

“Before a corporation commences business, the president or clerk shall make a certificate under oath, stating the amount of capital actually paid in, which shall be filed in the office of the secretary of state and a certified copy thereof filed with the clerk of the town in which the principal place of business of said corporation is to be located; and if the corporation contracts debts before a copy of its articles of association and such certificate are filed with such town clerk as provided in this chapter, the president and directors shall be personally liable for such debts. If the directors declare and pay a dividend to the stockholders from the property and assets of a corporation when the same is insolvent, or when by the payment of such dividend it becomes insolvent, knowing its condition, the directors assenting thereto, shall be jointly and severally liable, in an action founded on this statute, for debts due from the corporation at the time such dividend is made. One-fourth of the capital stock shall be paid in before the corporation contracts debts, and no part of it shall be withdrawn or diverted from the proper business of the corporation; but such capital stock may be issued in payment for any property deemed necessary for the business of the corporation, and the stock so issued shall be full paid stock and not liable to further call. No debts shall be contracted by the corporation exceeding in amount two-thirds of the capital stock actually paid in; and a director assenting to the creation of an indebtedness exceeding such amount, shall be personally liable for the excess.” ²⁷¹

“The stockholders of a corporation shall be individually liable to its creditors to an amount equal to the amount unpaid on the stock held by them respectively, for contracts and debts made by the corporation. If the capital stock of a corporation is withdrawn and refunded to the stockholders before the full payment of its debts, each stockholder shall be personally

²⁷¹ Vt. Gen. L. §§ 3722-3724.

liable therefor, to the amount so refunded to him, to be recovered in an action on this statute; and if a stockholder is compelled to pay such debt or any part thereof, he may, by proceedings in chancery, compel the other stockholders, to whom any part of said capital stock has been refunded, to contribute their proportion of the sum so paid by him.”²⁷²

§ 426. Virginia.

“Subscriptions to the capital stock of any corporation may be paid in money, land, or other property, real or personal, leases, options, mines, minerals, mineral rights, patent rights, rights of way, or other rights or easements, contracts, labor, or services; and there shall be no individual or personal liability on any subscriber beyond the obligation to comply with such terms as he may have agreed to in his contract of subscription; and any corporation may adopt such plan of financial organization and may dispose of its stock or bonds for the purposes of its incorporation at such prices, for such consideration, and on such terms and conditions as it sees fit: *provided*, however, that before making any issue of its stock or bonds it shall file with the State Corporation Commission a statement (verified by oath of the president or secretary of the corporation, and in such form as may be prescribed or permitted by the commission), setting forth fully and accurately the basis or financial plan upon which such stock and bonds are to be issued; and where such basis or plan includes services or property (other than money) received or to be received by the corporation, such statement shall accurately specify and describe in the manner prescribed or permitted by the commission the services and property, together with the valuation at which the same are received, or to be received, and the judgment of the directors as to the value of such land or other property, real or personal, leases, options, mines, mineral rights, patent rights, rights of way, or other rights or ease-

²⁷² *Ibid.* §§ 3725, 3726.

ments, contracts, labor, or services, in the absence of fraud, participated in by both parties to the transaction shall be conclusive." ²⁷³

"If the directors or officers of any corporation shall wilfully and fraudulently cause to be published, or give out, any statement or report of the condition or business of the corporation that is known to them to be false in any material respect, the officers and directors so causing such report or statement to be published, or given out, shall be jointly and severally liable for any loss or damage resulting to any person or corporation therefrom.²⁷⁴ If the board declare a dividend out of any part of the capital stock of the corporation, all the members of the board who shall be present and know that such dividend is declared out of the capital stock, and not dissent therefrom, shall, in their individual capacity, be jointly and severally liable to the corporation's creditors for the amount of capital so divided, and may be proceeded against therefor on a bill in equity filed on behalf of such creditors; and, moreover, each stockholder who participates in such dividend shall be liable to such creditors to the extent of the capital stock so received by him." ²⁷⁵

§ 427. Washington.

"The stockholders of any corporation formed under this chapter may, in the by-laws of the company, prescribe the times, manner and amounts in which payments of the sums subscribed by them respectively, shall be made; but in case the same shall not be so prescribed, the trustees shall have the power to demand and call in from the stockholders the sums by them subscribed, at such time, and in such manner, payments or installments, as they may deem proper." ²⁷⁶

"It shall not be lawful for the trustees to make any dividend

²⁷³ Va. Corp. Supp. ch. 5, § 9.

²⁷⁴ *Ibid.* § 28.

²⁷⁵ *Ibid.* § 60.

²⁷⁶ Wash. Corp. Supp. § 12.

except from the net profits arising from the business of the corporation, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company, nor to reduce the capital stock of the company unless in the manner prescribed in this chapter, or the articles of incorporation or by-laws; and in case of any violation of the provisions of this section, the trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of directors at the time, or were not present when the same did happen, shall, in their individual or private capacities, be jointly or severally liable to the corporation, and the creditors thereof in the event of its dissolution, to the full amount so divided, or reduced, or paid out: *Provided*, That this section shall not be construed to prevent a division and distribution of the capital stock of the company, which shall remain after the payment of all of its debts upon the dissolution of the corporation or the expiration of its charter." ²⁷⁷

"No person holding stock as executor, administrator, guardian, or trustee, or holding it as collateral security or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder, and the estate and funds in the hands of the executor, administrator, or guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in the trust fund would have been if he or she had been living and competent to act and hold the stock in his or her name." ²⁷⁸

§ 428. West Virginia.

"The stockholders of all corporations and joint-stock companies, except banks and banking institutions, created by

²⁷⁷ *Ibid.* § 15.

²⁷⁸ *Ibid.* § 17.

laws of this State, shall be liable for the indebtedness of such corporations to the amount of their stock subscribed and unpaid, and no more.²⁷⁹ The stockholders of any bank hereafter authorized by the laws of this State, whether of issue, deposit or discount, shall be personally liable to the creditors thereof, over and above the amount of stock held by them respectively to an amount equal to their respective shares so held, for all its liabilities accruing while they are such stockholders." ²⁸⁰

"If the board declare a dividend by which the capital of the corporation shall be diminished, all the members present who do not dissent therefrom and cause said dissent to be entered on the record of their proceedings, shall be jointly and severally liable to the creditors of the corporation for the amount the capital may have been so diminished; and may be decreed against therefor on a bill in equity filed by any creditor; and moreover, every stockholder who has received any such dividend shall be liable to the creditors for the amount of capital so received by him." ²⁸¹

§ 429. Wisconsin.

The promoters of a corporation are made liable by the following provision: "No such corporation shall transact business with any others than its members until at least one-half of its capital stock shall have been duly subscribed and at least twenty per centum thereof actually paid in; and if any obligation shall be contracted in violation hereof the corporation offending shall have no right of action thereon; but the signer or signers of the articles and the subscriber or subscribers for stock transacting such business or authorizing the same, or having knowledge thereof, consenting to the incurring of any debt or liability, as well as the stock-

²⁷⁹ W. Va. Const. Art. 11, § 2.

²⁸⁰ *Ibid.* § 6.

²⁸¹ W. Va. Code, ch. 53, § 40.

holders then existing, shall be personally liable upon the same." ²⁸²

"Whenever the capital stock of any corporation shall be diminished by any corporate vote, the stockholders thereof shall be liable for the payment of all debts then remaining unpaid, in an action by any such creditor or lawfully appointed receiver or assignee of such corporation, to an amount equal to the sum respectively refunded to them or credited upon their debts for unpaid stock, or both. And also the stockholders voting for such diminution shall be jointly and severally liable to any creditor whose debt shall then remain unpaid to an amount equal to the whole amount refunded to the stockholders or credited upon their debts for unpaid stock, or both; but all stockholders shall be liable for contribution to every stockholder compelled to discharge corporate debts under this section proportionately to the amount so refunded or credited to them respectively." ²⁸³

"If any stock shall be transferred which is not fully paid the corporation may, by agreement, to be noted on its stock-book, discharge the stockholder making such transfer from liability to it for the unpaid part of his stock subscription, and accept that of the person to whom the stock is transferred in his place; but the person transferring such stock shall be liable for the amount unpaid thereon to the then creditors of such corporation and those who become such within six months after such transfer, or to any lawfully appointed receiver or assignee of the corporation for their use." ²⁸⁴ The purchaser of stock not fully paid becomes liable for the unpaid balance. ²⁸⁵

"The stockholders of every corporation other than railroad corporations shall be personally liable to an amount equal to the stock owned by them respectively in such corporation, for all debts which may be due and owing to its clerks, serv-

²⁸² Wis. Rev. Stat. § 1773.

²⁸³ *Ibid.* § 1755.

²⁸⁴ *Ibid.* § 1756.

²⁸⁵ *Herdegen v. Cotzhausen*, 70 Wis. 589, 36 N. W. 385.

ants and laborers for services performed for such corporation, but not exceeding six months' service in any one case." ²⁸⁶

"No dividends shall be paid to any stockholder of any corporation until the capital stock has been fully paid in, and no dividend shall thereafter be declared or paid by the directors of any corporation except out of net profits properly applicable thereto and which shall not in any way impair or diminish the capital; and if any such shall be paid every stockholder receiving the same shall be liable to restore the full amount thereof, unless the capital be subsequently made good; and if the directors of any corporation shall pay any such dividend before the capital stock is fully paid in, when the corporation is insolvent or in danger of insolvency, not having reason to believe that there were sufficient net profits properly applicable thereto to pay the same without impairing or diminishing the capital, they shall be jointly and severally liable to the creditors of the corporation at the time of declaring such dividend to the amount of their claims; provided that any corporation which has invested or hereafter may invest its net earnings or income, or any part thereof, in permanent additions to its property, or whose property shall have increased in value, may lawfully declare a dividend payable to stockholders upon its capital, either in money or in stock, to the extent of the net earnings or income so invested, or of the said increase in the value of its property; but the total amount of such dividend shall not exceed the actual cash value of the assets owned by the corporation in excess of its total liabilities, including its capital stock." ²⁸⁷

When a creditor sues a corporation whose directors or stockholders are liable for payment of the debt, such directors or stockholders may be made parties either at the beginning or by a supplemental complaint founded on the judgment; ²⁸⁸ or the directors or stockholders may be charged by an action

²⁸⁶ Wis. Rev. Stat. § 1769.

²⁸⁷ *Ibid.* § 1765.

²⁸⁸ *Ibid.* §§ 3221, 3222.

against them personally (the corporation being joined or not at the election of the plaintiff); ²⁸⁹ and additional actions may be brought, if there are persons or property which could not be reached in the first. ²⁹⁰ An account shall be taken of the assets and liabilities of the corporation, and a receiver may be appointed; ²⁹¹ and fair distribution of the property of the corporation shall be made. ²⁹² The unpaid subscription liability of stockholders shall be enforced, if necessary; and if debts are still unpaid, the liabilities of directors and stockholders shall be ascertained and payment of the amount enforced. ²⁹³ The court may restrain other creditors from proceeding, and may call upon all creditors to join as parties. ²⁹⁴

§ 430. Wyoming.

“All stockholders of every company incorporated under the provisions of this chapter shall be severally individually liable to the creditors of the company in which they are stockholders to the amount of unpaid assessments on capital stock held by them respectively, and to no other or further amount, for all debts and contracts made by such company, until the whole amount of assessments on capital stock, fixed and limited by the trustees, shall be paid in, ten per cent. thereof within one year, and the balance shall be payable in installments, as shall be required by the trustees, who shall give six weeks' notice, by publication, of the time and place for the payment of the same.” ²⁹⁵

“If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent or which would diminish the amount of its capital stock, they shall be

²⁸⁹ *Ibid.* § 3223.

²⁹⁰ Wis. 1901, ch. 129, § 1.

²⁹¹ Wis. Rev. Stat. § 3224.

²⁹² *Ibid.* § 3225.

²⁹³ *Ibid.* § 3226.

²⁹⁴ *Ibid.* § 3227.

²⁹⁵ Wyo. Rev. Stat. § 3045.

jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall respectively continue in office; provided that if any of the trustees shall object to the declaring of such dividend, or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the clerk or secretary of the company and with the register of deeds within the county, they shall be exempt from the said liability.²⁹⁶ If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of such company.”²⁹⁷

“No person holding stock in any such company as executor, administrator, guardian or trustee and no such person holding such stock as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been if he had been living and competent to act, and held the same stock in his own name.”²⁹⁸

§ 431. England.

On the winding up of any company every present or past member shall be liable to contribute to the assets of the company an amount sufficient to pay all obligations, except as follows: “(1) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commence-

²⁹⁶ *Ibid.* § 3048.

²⁹⁷ *Ibid.* § 3049.

²⁹⁸ *Ibid.* § 3050.

ment of the winding up; (2) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member; (3) No past member shall be liable to contribute to the assets of the company unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act; (4) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member.”²⁹⁹ A director contracting for a limited company and suppressing the word “limited” is personally liable on the contract.³⁰⁰ Every member of a company carrying on business with less than seven members who are cognizant of that fact is severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same without the joinder in the action or suit of any other member.³⁰¹

§ 432. Canada, New Brunswick, Ontario.

“Every shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon; but he shall not be liable to an action therefor by any creditor until an execution at the suit of such creditor against the company has been returned unsatisfied in whole or in part; and the amount due on such execution, not exceeding the amount unpaid on his shares, as aforesaid, shall be the amount recoverable, with costs, from such shareholder; and any amount so recoverable, if paid by the shareholder, shall be considered as paid on his shares. Any shareholder may plead by way of defence in whole or in part any set-off which he can set up against the company, except a claim for unpaid dividends, or

²⁹⁹ 25 & 26 Vict. ch. 89, § 38.

³⁰⁰ *Ibid.* §§ 41, 42.

³⁰¹ *Ibid.* § 48.

a salary or allowance as a president or a director of the company." ³⁰²

Shareholders are not liable for any obligation of the company beyond the amount unpaid on their respective shares of stock; ³⁰³ and persons holding shares as trustees are not personally liable. ³⁰⁴

§ 433. Nova Scotia.

No member of any company shall be relieved from individual liability for its debts or obligations; but each member thereof shall be liable as a partner to the same extent as if no company existed; and in case any execution issued on any judgment against the company is returned unsatisfied the individual real and personal property of every member of the company shall be liable to respond such judgment under execution issued thereon in the same manner as if the same was a private debt due by such member, unless the special act creating the company exempts its members from such liability; and any member who is compelled to pay any moneys on account of the debts of the company may recover the same by action against the company. ³⁰⁵

³⁰² Can. 1902, ch. 15, § 31. To the same effect, New Bruns. 1893, ch. 7, § 68; Ont. Rev. Stat. ch. 191, § 37.

³⁰³ Can. 1902, ch. 15, § 30.

³⁰⁴ *Ibid.* § 32.

³⁰⁵ 2 Nov. Sc. Rev. Stat. ch. 127, § 11.

CHAPTER XVIII.

THE ENFORCEMENT ABROAD OF STOCKHOLDERS' OR DIRECTORS' LIABILITY.¹

- | | |
|---|---|
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§ 441. Kinds of individual liability.

Individual members of a corporation may in various ways incur a liability which it is desired to enforce in a foreign State. Before entering upon a discussion of the law upon this subject, it may be convenient to classify the cases of liability, since the power to enforce the obligation in a foreign State depends greatly upon the nature of it.

1. The stockholder is liable at common law for his unpaid subscription for his shares. This is a purely contractual liability, on which the corporation or its representative may sue as upon any claim of the corporation.

2. By statute an additional liability is placed upon individuals. Thus the stockholders are often made responsible for the debts of the corporation up to the par value of their

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stock; or for the debts until the whole amount of the capital has been paid in. So the directors are often made liable by statute for all debts contracted in excess of the capital stock. This liability, while statutory, is original; the stockholder or director is a party to the debt at the moment of its creation, he is, in fact, a statutory surety for the corporation under the circumstances described. Liability of this sort may either be a direct and absolute liability, or it may be indirect and contingent. If the liability runs directly to the corporation, it is quite analogous to the liability for calls; if it runs directly to the creditor, it may be enforced by him as he might enforce the liability of any other surety. But an indirect or contingent statutory liability must be enforced, if at all, in accordance with some particular provisions of the statute creating it.

3. Another kind of statutory liability, not usually imposed upon stockholders, but often on directors, attaches to the individuals for all debts of the corporation by reason of some wrongdoing or omission of duty; as for instance, where the directors who file a false statement of the condition of the corporation are made liable for all its debts, whenever contracted. This is not an original liability, since at the time the debt was contracted the director was not a party to it. The debt, to be sure, might happen to be contracted after the filing of the false return; but that would be a mere accidental circumstance. The nature of the liability is the same whether the debt was contracted before or after the director's liability arose; the director is arbitrarily made responsible for it, and his liability was not counted upon by the creditor at the time the debt was contracted. This is the sort of liability which is commonly called penal.

§ 442. Existence of liability determined by the State of charter.

In all these cases the existence of the obligation is to be determined by the law of the State of charter. That law creates the obligation, and that alone can determine what liability it has created. The statutes of that State, as in-

terpreted by its courts, determine the nature and extent of the liability.² And accordingly, if by the law of the State of charter the stockholder may set off against his liability a debt due to him from the corporation, being regarded as equitably liable only for the balance, he may do this in any State in which he may be sued.³ And if any special form of proceeding is required by the law of the State of charter, as for instance, that a judgment should first be obtained against the corporation before the individual can be sued, this procedure must be followed.⁴ So whether a husband is liable to contribute on his wife's stock depends upon the law of the State of charter.⁵

§ 443. Liability for unpaid subscription.

A person who has subscribed for stock, and has agreed to pay for it, but has not done so, is evidently liable to the company for the amount he has subscribed, and this liability arises entirely from contract. Primarily a creditor of the corporation has nothing to do with it. The corporation must call for the payment of the subscription, and must then enforce its call by getting in the amount from the stockholders. This liability to respond to calls for unpaid subscription to the capital stock, is like any other debt due to the corpora-

² *Nashua Savings Bank v. Anglo-American L. M. & A. Co.*, 189 U. S. 221, 47 L. ed. 782; *Morris v. Glenn*, 87 Ala. 628; *Young v. Farwell*, 139 Ill. 326, 28 N. E. 845; *Fowler v. Lamson*, 146 Ill. 472, 34 N. E. 932; *Mandel v. Swan Land & Cattle Co.*, 154 Ill. 177, 40 N. E. 462; *First Nat. Bank v. Gustin M. C. M. Co.*, 42 Minn. 327, 44 N. W. 198, 18 A. S. R. 510, 6 L. R. A. 676; *Tompkins v. Blakey*, 70 N. H. 584, 49 Atl. 111; *Molson's Bank v. Boardman*, 47 Hun (N. Y.), 135; *Aldrich v. Anchor C. & D. Co.*, 24 Ore. 32, 32 Pac. 756, 41 A. S. R. 831; *Ball v. Anderson*, 196 Pa. 86, 46 Atl. 366; *Vance v. McNabb Coal & Coke Co.*, (Tenn. Ch. App.) 48 S. W. 235; *Farr v. Briggs*, 72 Vt. 225, 47 Atl. 793, 82 A. S. R. 930; *Nimick v. Mingo Iron Works Co.*, 25 W. Va. 184.

³ *Mechanics' Sav. Bank v. Fidelity I. T. & S. D. Co.*, 87 Fed. 113; *Broadway Nat. Bank v. Baker*, 176 Mass. 294, 57 N. E. 603; *Sargent v. Stetson*, 181 Mass. 371, 63 N. E. 929; *Ball v. Anderson*, 196 Pa. 86, 46 Atl. 366.

⁴ *Fourth Nat. Bank v. Francklyn*, 120 U. S. 747, 30 L. ed. 825.

⁵ *In re Federal Bank of Australia*, 8 Bkr. Cas. (New So. Wales) 35.

tion. Upon this obligation suit may be brought in any State by the corporation,⁶ or by its representative, as for instance its receiver⁷ or assignee.⁸ The amount of the call may be fixed by the directors, or if a receiver has been appointed it may be fixed by the appointing court; and suit for the amount may then be brought in any State.⁹ The effect of this order of assessment is to fix the amount which any stockholder liable under his contract of subscription should pay, and to authorize the receiver to bring suits against stockholders for the same, but not to determine whether any particular stockholder is liable for anything; and one who is sued as stockholder may therefore interpose any personal defence, as for instance, that he is not a stockholder, or that the statute of limitations has run in his favor;¹⁰ or (where such defence is allowed in a similar action in the State of charter) that the call was for an illegal purpose and *ultra vires*.¹¹

But while a creditor has no direct right to come upon the stockholder, he may take advantage of any method of reaching him open to him in the State where he sues. If the claim has not been enforced by the corporation it is an asset, and if such

⁶ *Mandel v. Swan Land & Cattle Co.*, 154 Ill. 177, 40 N. E. 462; *Sigua Iron Co. v. Brown*, 171 N. Y. 488, 64 N. E. 194.

⁷ *Mann v. Cooke*, 20 Conn. 178; *Fish v. Smith*, 73 Conn. 377, 47 Atl. 711; *Dayton v. Borst*, 31 N. Y. 435; *In re Hercules Ins. Co.*, 6 Ir. Eq. 207. *Contra*, *In re Hollyford C. M. Co.*, L. R. 5 Ch. 93; *In re City of Glasgow Bank*, 14 Ch. Div. 628. In Vermont the foreign receiver is not allowed to sue in his own name. *Murtey v. Allen*, 71 Vt. 377, 45 Atl. 752, 76 A. S. R. 779; *Sparks v. Estabrooks*, 72 Vt. 101, 47 Atl. 394.

⁸ *Stoddard v. Lum*, 159 N. Y. 265, 53 N. E. 1108, 70 A. S. R. 541, 45 L. R. A. 551.

⁹ *Hawkins v. Glenn*, 131 U. S. 319, 33 L. ed. 184; *Lehman v. Glenn*, 87 Ala. 618; *Glenn v. Williams*, 60 Md. 93; *Mut. Fire Ins. Co. v. Phoenix Furniture Co.*, 108 Mich. 170, 66 N. W. 1095, 62 A. S. R. 693, 34 L. R. A. 694; *Commonwealth Mut. Fire Ins. Co. v. Hayden*, 60 Neb. 636, 83 N. W. 992; *Parker v. Stoughton Mill Co.*, 91 Wis. 174, 64 N. W. 751, 51 A. S. R. 881.

¹⁰ *Glenn v. Marbury*, 145 U. S. 499, 506, 36 L. ed. 790; *Great Western Tel. Co. v. Purdy*, 162 U. S. 329, 40 L. ed. 986.

¹¹ *Bank of China v. Morse*, 168 N. Y. 458, 61 N. E. 774, 85 A. S. R. 676, 56 L. R. A. 139.

remedy is permitted, a creditor may reach it either by garnishment or by a creditors' bill. The subscribing stockholder should be treated in the same way as any other debtor of the company. If the law of the forum permits the garnishment of such a claim, the creditor may reach it in that way.¹² If a creditor can reach the claim only by a creditors' bill, he must thus proceed, making the corporation and all the stockholders parties.¹³

Where the stock was taken without any agreement to pay for it (as for instance, if it were in exchange for property of small value, or were given as a bonus to purchasers of bonds) there is no agreement to be enforced, and in the absence of a statute no creditor could claim a right against the stockholder. A creditor could have no right against a subscriber, founded on his agreement, unless the corporation could sue him on the contract.¹⁴ The case would, however, be different if the stock, purporting to be fully paid up, was issued at fifty per cent. of the par value; in spite of the statement contained in the share, the original subscriber still owes fifty per cent., and that amount may be collected from him in a proper proceeding.¹⁵

§ 444. Statutory liability to the corporation.

Where by statute the stock is liable to assessment for the payment of debts, and a call has been made by the corporation or its representative, the amount due may be collected in another State, either by the corporation itself¹⁶ or by its

¹² *In re Queensland Mercantile and Agency Co.*, [1891] 1 Ch. 536; *Cooper v. Adel Security Co.*, 122 N. C. 463, 30 S. E. 348.

¹³ *Patterson v. Lynde*, 112 Ill. 196; *Tuttle v. Bank of Republic*, 161 Ill. 497, 44 N. E. 984; *Turner v. Alabama M. & M. Co.*, 25 Ill. App. 144; *Rule v. Omega S. & G. Co.*, 64 Minn. 326, 67 N. W. 60; *Shickle v. Watts*, 94 Mo. 410; *Griffith v. Mangam*, 73 N. Y. 611; *Aultman's Appeal*, 98 Pa. 505.

¹⁴ *New Haven Horse Nail Co. v. Linden Spring Co.*, 142 Mass. 349, 7 N. E. 773; *Seymour v. Sturgess*, 26 N. Y. 134; *Christensen v. Eno*, 106 N. Y. 97.

¹⁵ *Guerney v. Moore*, 131 Mo. 650, 32 S. W. 1132.

¹⁶ *Pfaff v. Gruen*, 92 Mo. App. 560.

receiver.¹⁷ If by the law of the State of charter the stockholder is liable to the creditor only, a receiver of the corporation cannot sue,¹⁸ and conversely if the receiver is entitled to get in the amount, a creditor cannot sue in a foreign State.¹⁹ The binding effect of a judgment by which a call is ordered is the same as in the case of a call on the subscriber's liability.²⁰

If the liability is such that a creditors' bill may be maintained upon it, this may be done in the foreign State.²¹

§ 445. Direct absolute liability to the creditor.

Similarly, when the law of the State of charter creates a direct absolute liability of the stockholder to the creditor, there is an ordinary suretyship obligation, imposed on the stockholder at the time of the original transaction, and capable of being enforced by an ordinary action sounding in contract or debt. If the nature of the liability is such by the law that created it, that any creditor could sue any stockholder and recover from him up to the amount which he is liable to pay leaving it for him to recover such contribution as may be due him from other stockholders, this liability may be enforced in any State.²²

"It certainly concerns the due administration of justice that all stockholders, wherever they reside, should be com-

¹⁷ *Howarth v. Ellwanger*, 86 Fed. 54; *Kirtley v. Holmes*, 107 Fed. 1; *Childs v. Cleaves*, 95 Me. 498, 50 Atl. 714; *Howarth v. Lombard*, 175 Mass. 570, 56 N. E. 888, 49 L. R. A. 301; *Howarth v. Angle*, 162 N. Y. 179, 56 N. E. 489, 47 L. R. A. 725; *Wigton v. Kenney*, 51 App. Div. 215; *Cushing v. Perot*, 175 Pa. 66, 34 Atl. 447, 52 A. S. R. 835, 34 L. R. A. 737 (*semble*); *King v. Cochran*, (Vt.) 56 Atl. 667. *Contra*, *Hunt v. Whewell*, (Wis.) 99 N. W. 599.

¹⁸ *Hale v. Allinson*, 188 U. S. 56, 47 L. ed. 380.

¹⁹ *Cushing v. Perot*, 175 Pa. 66, 34 Atl. 447, 52 A. S. R. 835, 34 L. R. A. 737.

²⁰ *Childs v. Cleaves*, 95 Me. 498, 50 Atl. 714; *King v. Cochran*, (Vt.) 56 Atl. 667.

²¹ *Bartlett v. Drew*, 57 N. Y. 587.

²² *Flash v. Conn*, 109 U. S. 371, 27 L. ed. 966 (s. c., 16 Fla. 428); *Whitman v. Oxford Nat. Bank*, 176 U. S. 559, 44 L. ed. 587; *Hancock Nat. Bank v.*

pelled by proceedings somewhere to perform the statutory obligations toward creditors of the corporation which they have assumed by becoming stockholders. . . .

"The legislature of Kansas has chosen to give to the creditors of certain of its corporations the security which the individual liability of each stockholder affords, to the extent prescribed by its statutes, leaving the burden of enforcing contribution from other stockholders on any stockholder who has been compelled to pay anything in discharge of the debts of the corporation.

"Persons becoming stockholders in foreign corporations can ascertain the nature and extent of the liability of the stockholders in such corporations according to the laws of the State or country under which the corporations are organized, and they cannot complain if this liability is enforced against them." ²³

Judgment in favor of the creditor against the corporation in its own State is ordinarily conclusive in every State against a stockholder as to the existence of the debt.²⁴ A stockholder

Farnum, 176 U. S. 640, 44 L. ed. 619 (reversing 20 R. I. 466, 40 Atl. 340); Rhodes v. U. S. Nat. Bank, 66 Fed. 512; McVicar v. Jones, 70 Fed. 754; Mechanic's Savings Bank v. Fidelity Ins. T. & S. D. Co., 87 Fed. 113; Dexter v. Edmonds, 89 Fed. 467; Hale v. Hardon, 95 Fed. 747; Ferguson v. Sherman, 116 Cal. 169, 47 Pac. 1023; Bell v. Farwell, 176 Ill. 489, 52 N. E. 346; Hancock Nat. Bank v. Ellis, 172 Mass. 39, 51 N. E. 207, 70 A. S. R. 232, 42 L. R. A. 396; Broadway Nat. Bank v. Baker, 176 Mass. 294, 57 N. E. 603; Western Nat. Bank v. Lawrence, 117 Mich. 669, 76 N. W. 105; First Nat. Bank v. Gustin M. C. M. Co., 42 Minn. 327, 44 N. W. 198, 18 A. S. R. 510, 6 L. R. A. 676 (*semble*); Guernsey v. Moore, 131 Mo. 650, 32 S. W. 1132; Tompkins v. Blakey, 70 N. H. 584, 49 Atl. 111; Perkins v. Church, 31 Barb. 84; Howarth v. Angle, 162 N. Y. 179, 56 N. E. 489; Savings Assoc. v. O'Brien, 51 Hun, 45, 3 N. Y. S. 764; Blair v. Newbegin, 65 Oh. St. 425, 62 N. E. 1040; Aldrich v. Anchor Coal & Development Co., 24 Ore. 32, 32 Pac. 756, 41 A. S. R. 831; Cushing v. Perot, 175 Pa. 66, 34 Atl. 447, 52 A. S. R. 835, 34 L. R. A. 737; Sackett's Harbor Bank v. Blake, 3 Rich. Eq. 225.

²³ Field, C. J., in Hancock Nat. Bank v. Ellis, 172 Mass. 39, 51 N. E. 207, 70 A. S. R. 232, 42 L. R. A. 396.

²⁴ American Nat. Bank v. Supplee, 115 Fed. 657; Howarth v. Lombard, 175 Mass. 570, 56 N. E. 888; Straw & E. Mfg. Co. v. L. D. Kilbourne B. &

who was not actually before the foreign court may, however, show that the alleged debt was *ultra vires*.²⁵

§ 446. No recovery if procedure of form unsuitable.

But where the liability created by the statute is a liability which can be enforced only by some particular form of procedure, the liability cannot be enforced in another State, at least unless the latter State can provide some process suitable for the purpose.²⁶ For the particular result attained by the method provided in the State of charter must be attained in the foreign State, if the stockholder is to be held there at all. No one can or ought to be held on his stockholder's liability in any other way.²⁷

It is often provided, for instance, in the State of charter (either by the statute itself or by the common law) that the stockholders shall be reached by a creditors' bill in equity, in which all creditors may join, and to which all the stockholders and the corporation itself must be parties. Where such is the law of the charter State, a stockholder in a foreign jurisdiction may be reached neither by an action at law there²⁸ nor even ordinarily by a creditors' bill there, since the corporation and the other stockholders cannot be reached.²⁹

"We have no jurisdiction that will reach such corporation

S. Co., 80 Minn. 125, 83 N. W. 36; *Elderkin v. Peterson*, 8 Wash. 674, 36 Pac. 1089.

²⁵ *Ward v. Joslin*, 186 U. S. 142, 46 L. ed. 1093.

²⁶ *Russell v. Pac. Ry.*, 113 Cal. 258, 45 Pac. 323; *Patterson v. Lynde*, 112 Ill. 196; *Young v. Farwell*, 139 Ill. 326, 28 N. E. 845; *Tuttle v. Bank of Republic*, 161 Ill. 497, 44 N. E. 984; *Lowry v. Inman*, 46 N. Y. 119; *Marshall v. Sherman*, 148 N. Y. 9, 42 N. E. 419, 51 A. S. R. 654, 34 L. R. A. 757; *Cleveland, L. & W. Ry. v. Kent*, 87 Hun (N. Y.), 329; *Nimick v. Mingo Iron Works Co.*, 25 W. Va. 184; *May v. Black*, 77 Wis. 101, 45 N. W. 949; *Finney v. Guy*, 111 Wis. 296, 87 N. W. 255.

²⁷ *Pollard v. Bailey*, 20 Wall. 520, 527, 22 L. ed. 376; *Fowler v. Lamson*, 146 Ill. 472, 34 N. E. 932; *Remington v. Samana Bay Co.*, 140 Mass. 494; *Rice v. Merrimac Hosiery Co.*, 56 N. H. 114; *Howarth v. Angle*, 162 N. Y. 179, 56 N. E. 489; and cases cited in the preceding note.

²⁸ *Erickson v. Nesmith*, 15 Gray (Mass.), 221.

²⁹ *Erickson v. Nesmith*, 4 Allen (Mass.), 233.

out of this commonwealth, and having no assets here, and the same is true of the stockholders residing in New Hampshire. A bill in equity in Massachusetts is therefore not the remedy intended to be prescribed by the statute of New Hampshire creating and regulating the liability of stockholders in a manufacturing corporation in New Hampshire. It is urged on the part of the plaintiffs that great practical evil may result from thus refusing to charge a party here who is an actual stockholder of a corporation in New Hampshire, but who resides without its limits. To this it may be replied, that it would be a much more serious evil to hold that the whole matter of winding up the concerns of a bankrupt corporation of New Hampshire, ascertaining who are its creditors, who its stockholders, what is the amount of its assets, and how are the same to be distributed, should be transferred to the jurisdiction of Massachusetts by reason of the residence here of a single member of such corporation. There seems to be no practical mode of dealing with such corporation and its members, when seeking to charge the latter upon their statute liability, but to proceed in the manner prescribed by the statute creating such liability, and in the local jurisdiction where the corporation was established and carries on its business, and by whose local statutes alone the liability exists." ³⁰

In most cases it will be possible to obtain relief by proceeding in the State of charter, since the courts there have jurisdiction over the corporation and for this purpose, at least, over all the stockholders; and a judgment having been obtained in that State proceedings upon the judgment may then be brought in the stockholders' State.³¹ This is not always possible, as for instance, where the corporation has been dissolved.³² But the impossibility of obtaining relief is no hardship of which the creditor has a right to complain.

³⁰ Dewey, J., in *Erickson v. Nesmith*, 4 Allen (Mass.), 233.

³¹ *Broadway Nat. Bank v. Baker*, 176 Mass. 294, 57 N. E. 603; *Tompkins v. Blakey*, 70 N. H. 584, 49 Atl. 111.

³² *Remington v. Samana Bay Co.*, 140 Mass. 494.

Since his right is entirely dependent upon the statutes of the State of charter, he is entitled to claim no more than that State grants.

§ 447. Recovery on contingent liability.

A stockholder's contingent liability can therefore be enforced in another State, if at all, only when the remedy provided by the statute is such that it is capable of use in the other State. But it is doubtful whether such liability can be enforced by original action in a foreign State even if a suitable form of proceeding can there be found.

"This court does not take jurisdiction of a suit to enforce this liability of stockholders in a foreign corporation, not because it would be a suit to enforce a penalty or a suit opposed to the policy of our laws, but because it is a suit against a foreign corporation which involves the relation between it and its stockholders, and in which complete justice only can be done by the courts of the jurisdiction where the corporation was created."³³ If the enforcement of the liability involves a determination of the internal affairs of the foreign corporation, clearly no action will lie; and it may well be held that an action which requires the parcelling out of corporation debts among the stockholders does involve such determination. It is accordingly held in most jurisdictions that where there is no direct and absolute obligation from the stockholder to the corporation or the creditor no action will be allowed in a foreign State.³⁴

³³ Field, J., in *Post v. Toledo, C. & S. L. R. R.*, 144 Mass. 341, 345.

³⁴ *Evans v. Nellis*, 187 U. S. 271, 47 L. ed. 173; *State Nat. Bank v. Sayward*, 86 Fed. 45; *Elkhart National Bank v. Northwestern G. L. Co.*, 87 Fed. 252; *New Haven H. N. Co. v. Linden Spring Co.*, 142 Mass. 349, 7 N. E. 773; *Bank of North America v. Rindge*, 154 Mass. 203, 27 N. E. 1015, 26 A. S. R. 240, 13 L. R. A. 56; *Coffing v. Dodge*, 167 Mass. 231, 45 N. E. 928; *Crippen v. Loughton*, 69 N. H. 540, 44 Atl. 538, 76 A. S. R. 192, 46 L. R. A. 467; *Marshall v. Sherman*, 148 N. Y. 9, 42 N. E. 419, 51 A. S. R. 654, 34 L. R. A. 757; *Barnes v. Wheaton*, 80 Hun (N. Y.), 8; *Bank of Virginia v. Adams*, 1 Pars. Eq. (Pa.), 534; *Bates v. Day*, 198 Pa. 513, 48 Atl. 407; *May v. Black*, 77 Wis. 101; *McLaughlin v. O'Neill*, 7 Wyo. 187.

It is sometimes asserted that the views of the courts are changing, that the doctrine just stated is yielding to a more liberal view, and that today a creditor may pursue such a remedy in any State which can do justice between the parties.³⁵ And there is indeed much ground for this opinion. In several jurisdictions successive suits founded upon the same statutory liability have been decided, the first against and the second in favor of the plaintiff.³⁶ But the later case is in every case consistent with the former; a direct liability of the individual stockholder to each creditor was not alleged in the earlier case, but was alleged and proved in the later case. The distinction is clearly made in a leading case by the Supreme Court.³⁷

"In the cases of *Pollard v. Bailey*,³⁸ *Terry v. Tubman*,³⁹ . . . the liability of the stockholders was in proportion to the stock held by them. Each stockholder was, therefore, only liable for his proportion of its debts. This proportion could only be ascertained upon an account of the debts and stock, and a pro rata distribution of the indebtedness among the several stockholders. This, the court held, could only be done by a suit in equity. But in this case the statute makes every stockholder individually liable for the debts of the company for an amount equal to the amount of his stock.

³⁵ See this view well and vigorously expressed in *Pfaff v. Gruen*, 92 Mo. App. 560. "An increasing tendency has been observable in both state and federal jurisdictions during the last decade to sanction the enforcement of these obligations extraterritorially in any court of competent jurisdiction, except where the rights of a citizen in the state of the forum are thereby prejudiced, or the public policy of such state is contravened." *Whitehouse, J.*, in *Childs v. Cleaves*, 95 Me. 498, 50 Atl. 714.

³⁶ *State Nat. Bank v. Sayward*, 91 Fed. 443, and *Hale v. Hardon*, 95 Fed. 747; *Tuttle v. Nat. Bank of Republic*, 161 Ill. 497, 44 N. E. 984, and *Bell v. Farwell*, 176 Ill. 489, 52 N. E. 346; *Coffing v. Dodge*, 167 Mass. 231, 45 N. E. 928, and *Hancock Nat. Bank v. Ellis*, 172 Mass. 39, 51 N. E. 207, 70 A. S. R. 232, 42 L. R. A. 396; *Marshall v. Sherman*, 148 N. Y. 9, 42 N. E. 419, 51 A. S. R. 654, 34 L. R. A. 757, and *Howarth v. Angle*, 162 N. Y. 179, 56 N. E. 489.

³⁷ *Woods, J.*, in *Flash v. Conn*, 109 U. S. 371, 380, 27 L. ed. 966.

³⁸ 20 Wall. 520, 22 L. ed. 376.

³⁹ 92 U. S. 156, 23 L. ed. 537.

This liability is fixed and does not depend on the liability of other stockholders. There is no necessity for bringing in other stockholders or creditors."

In *Howarth v. Angle*,⁴⁰ Judge Varn said: "He relies upon the case of *Marshall v. Sherman*. . . . The action was founded upon a local statute, which not only created the liability, but also provided a peculiar and complicated remedy unknown to our courts, and which could not be entirely enforced in this state.⁴¹ The liability was neither contractual, in the general sense, nor penal, but the statute charged the property of the stockholder with the debts of the insolvent corporation to the extent of the stock held by him. It was the case so aptly described by Judge Allen in *Lowry v. Inman*, where the intent of the legislature 'was not to create a general, personal or property liability, but to charge the property of the stockholders, and that not generally, or by the usual and ordinary process, but conditionally, and by a peculiar and unusual procedure, only available in the courts of that State, not only limiting and prescribing the security and rights of the creditor, and the obligation and liability of the stockholder, but prescribing the remedy, going with it and as a part of the right.' The assets had not been marshalled or appropriated for the benefit of creditors and there was no way to determine, with any degree of accuracy, the amount of the deficiency or how much the defendant ought to pay. The action, if it had not been arrested by the demurrer interposed to the complaint, would naturally have resulted in the appropriation by one creditor, alone, of that which belonged to others equally with himself. Under these circumstances we declared that 'when the courts of this state are asked to administer the statutes of Kansas, and we can see that the case is surrounded by such complications, and the circumstances are such that it cannot be done without injustice to our own citizens or that

⁴⁰ 162 N. Y. 179, 56 N. E. 489.

⁴¹ Citing *Lowry v. Inman*, 46 N. Y. 119; *Christensen v. Eno*, 106 N. Y. 97, 103.

it will be impossible to do full and complete justice to all the parties in interest, it is reasonable and just to decline to administer them at all.' It is not necessary that the procedure to enforce the liability in question should be that required by statute in this state in the case of domestic corporations, as that would frequently be impossible and would withhold the right of comity altogether. . . . It is sufficient if the method of procedure in our courts is such that no injustice is done to the defendant, or to any citizen of this state, and the established policy of the state is not interfered with."

§ 448. Penal liability of stockholder.

If the stockholders' liability is penal, it cannot be enforced in a foreign State; but the stockholder's liability, whether absolute or contingent, is usually an original one, and not penal upon any theory.⁴²

§ 449. Director's liability as surety.

The liability of a director is in almost every case direct and absolute. The creditor is entitled to sue the director as a party absolutely liable for the debt, and to recover judgment without joining either the corporation or the other directors. No difficulty of procedure is involved, therefore, and if the liability is to be regarded as a contractual one there is no reason why recovery should not be had against the director in a foreign State. But if the liability is penal, the obligation is not to be enforced outside the State which created it.

In the State courts the question, what is a penal obligation, appears to be well settled. If the directors' obligation formed part of the original contract, and is given the creditor to prevent his personally suffering a loss of his claim because of some misconduct of the director, it is remedial, and may be enforced in any State. Such a statute as that making the directors liable for debts contracted in excess of the capital

⁴² *Flash v. Conn*, 109 U. S. 371, 27 L. ed. 966.

stock creates a liability which may be enforced in any State.⁴³ "Where the purpose of a statute is to furnish a remedy to creditors who have been injured by the directors' violation of the requirements of the statute, the liability of such officers is contractual, and actions upon such statutes are transitory and can be brought in any State in courts of competent jurisdiction."⁴⁴ Such a statute is "a measure of individual security which created rights in individual citizens."⁴⁵

"Some of the decisions by courts of other States in which a different doctrine has been held have been rendered upon statutes not containing the remedy for creditors, which is expressly provided in the South Dakota statute. That statute clearly is not penal either in its letter or intent, but it grants a right of action to private persons who have suffered pecuniary injury in consequence of certain officers of corporations violating the statute, to recover damages of those officers, the extent of whose liability is the amount of pecuniary loss sustained by such private persons—creditors of the corporation. No public wrong was committed when the directors exceeded the prescribed limit in creating debts. The creditors were the only persons upon whom a wrong was committed, and they have a remedy by virtue of the *quasi*-contract which the directors entered into with them when the sales of securities were made, to the effect that the directors were not exceeding the prescribed limits in creating debts. The obligation which the statute imposed upon the directors not to create debts beyond a certain limit entered into the contracts of sales of securities which the directors made through their agents. The directors created the debt in this jurisdiction, and the statute of the sister State fixes the extent of their liability, which does not arise from their personal mis-

⁴³ *Field v. Haines*, 28 Fed. 919; *Neal v. Moultrie*, 12 Ga. 104; *Ex parte Van Riper*, 20 Wend. 614; *Farr v. Briggs*, 72 Vt. 225, 47 Atl. 793, 82 A. S. R. 930.

⁴⁴ *Tyler, J.*, in *Farr v. Briggs*, *supra*.

⁴⁵ *Neal v. Moultrie*, 12 Ga. 104.

conduct merely irrespective of its effect upon the property rights of others, but, as was said by the court in *Field v. Haines*,⁴⁶ 'the liability arises out of the assent to the contract creating the debt.' As was said in *Wind. Prov. Inst. v. Sprague*,⁴⁷ in respect to directors: 'They can keep the indebtedness of the company within the limits fixed by the legislature, or they can extend that indebtedness beyond that limit and voluntarily take upon themselves the relation of joint debtors to the creditors of the company.' The liability is similar to that of sureties and guarantors, and evidently was imposed partly for the purpose of inducing the directors to perform their prescribed duties, and partly as a means of securing the creditors of corporations from losses occasioned by the acts of their officers."⁴⁸

§ 450. Director's penal liability.

If on the other hand the liability is imposed upon the director as a punishment for not doing his duty, as for instance, for failure to file a report or for misrepresentation contained in such report, and enures to the benefit of the creditor without regard to the creditor's injury or even to the time of contracting the debt—if in short, the liability is imposed for some act or neglect in no way connected with the contracting of the debt, the obligation is a penal one, and cannot be enforced in a foreign State.⁴⁹

To the same effect are decisions of the courts that liability of the sort just described is penal, and therefore does not sur-

⁴⁶ 28 Fed. 919.

⁴⁷ 43 Vt. 502.

⁴⁸ *Tyler, J., in Farr v. Briggs*, 72 Vt. 225, 47 Atl. 793, 82 A. S. R. 930.

⁴⁹ *Flash v. Conn.*, 109 U. S. 371, 27 L. ed. 966 (*semble*); *Mitchell v. Hotchkiss*, 48 Conn. 9; *Diversey v. Smith*, 103 Ill. 378; *Halsey v. McLean*, 12 All. (Mass.), 438; *Derrickson v. Smith*, 27 N. J. L. 166; *Stephens v. Fox*, 83 N. Y. 313; *Bird v. Hayden*, 1 Robt. (N. Y.) 383; *Woods v. Wicks*, 7 Lea (Tenn.), 40. On this ground enforcement of the director's liability in a foreign State was refused in *First Nat. Bank v. Price*, 33 Md. 487, though in that case the liability would seem to have been purely remedial.

vive,⁵⁰ and that a judgment obtained against the corporation in an action on the contract is *res inter alios*, and cannot be shown in an action against the director.⁵¹

§ 451. Rule in the Supreme Court of the United States.

The Supreme Court of the United States, however, has taken a different view of this question. It has expressed the opinion that no obligation will be refused enforcement as penal in a foreign State unless it arises out of the commission of a crime.⁵² In this opinion Mr. Justice Gray followed the reasoning of the English Privy Council on a Canadian appeal,⁵³ and held that the statutory liability of a director for filing a false return is not penal, but may be enforced by a creditor by an action brought in a foreign State.

In the Privy Council Lord Watson said of the rule that a penal obligation will not be enforced abroad: "The rule had its foundation in the well-recognized principle that crimes, including in that term all breaches of public law punishable by pecuniary mulct or otherwise, at the instance of the State government, or of some one representing the public were local in this sense, that they were only cognizable and punishable in the country where they were committed. Accordingly no proceeding, even in the shape of a civil suit, which had for its object the enforcement by the State, whether directly or indirectly, of punishment imposed for such breaches by the *lex loci*, ought to be admitted in the courts of any other country. In its ordinary acceptation, the word 'penal' might embrace penalties for infractions of general law, which did not constitute offences against the State; it might, for many legal purposes, be applied with perfect propriety to penalties created

⁵⁰ *Fisher v. Graves*, 80 Fed. 590; *Stokes v. Stickney*, 96 N. Y. 323.

⁵¹ *Chase v. Curtis*, 113 U. S. 452, 28 L. ed. 1038; *Miller v. White*, 50 N. Y. 137; *Whitney Arms Co. v. Barlow*, 63 N. Y. 62.

⁵² *Huntington v. Attrill*, 146 U. S. 657, 36 L. ed. 1123.

⁵³ *Huntington v. Attrill*, [1893] A. C. 150, 8 T. L. Rep. 341, reversing s. c. 17 Ont. 245, 18 Ont. App. 136.

by contract; and it, therefore, when taken by itself, failed to mark that distinction between civil rights and criminal wrongs, which was the very essence of the international rule.”⁵⁴ And in the Supreme Court of the United States Mr. Justice Gray said: “Penal laws, strictly and properly, are those imposing punishment for an offence committed against the State, and which, by the English and American constitutions, the executive of the State has the power to pardon. Statutes giving a private action against the wrongdoer are sometimes spoken of as penal in their nature, but in such cases it has been pointed out that neither the liability imposed nor the remedy given is strictly penal. . . . The provision of the statute of New York, now in question, making the officers of a corporation, who sign and record a false certificate of the amount of its capital stock, liable for all its debts, is in no sense a criminal or *quasi*-criminal law. The statute, while it enables persons complying with its provisions to do business as a corporation without being subject to the liability of general partners, takes pains to secure and maintain a proper corporate fund for the payment of the corporate debts. With this aim, it makes the stockholders individually liable for the debts of the corporation until the capital stock is paid in and a certificate of the payment made by the officers; and makes the officers liable for any false and material representation in that certificate. The individual liability of the stockholders takes the place of a corporate fund, until that fund has been duly created; and the individual liability of the officers takes the place of the fund, in case their statement that it has been duly created is false. If the officers do not truly state and record the facts which exempt them from liability, they are made liable directly to every creditor of the company, who by reason of their wrongful acts has not the security for the payment of his debt out of the corporate property, on which he had a right to rely. As the statute imposes a burdensome liability on the officers

⁵⁴ *Huntington v. Attrill*, [1893] A. C. 150, 8 T. L. Rep. 341.

for their wrongful act, it may well be considered penal, in the sense that it should be strictly construed. But as it gives a civil remedy, at the private suit of the creditor only, and measured by the amount of his debt, it is as to him clearly remedial. To maintain such a suit is not to administer a punishment imposed upon an offender against the State, but simply to enforce a private right secured under its laws to an individual. We can see no just ground, on principle, for holding such a statute to be a penal law, in the sense that it cannot be enforced in a foreign State or country.”⁵⁵

In support of this doctrine no authority quite in point was cited except the decision of the Privy Council, nor is it believed that at that time any such authority existed. The cases in State courts holding such obligations penal were cited without attempting to distinguish them. The court in support of its view referred to several cases (previously cited in this chapter) where the right was clearly remedial; and to a few cases in which it is difficult to discover how the question under consideration was in any way involved. The view expressed in the case cannot be regarded as sound in principle.

This doctrine was not necessary to the decision of the case before the court, either in the Privy Council or in the Supreme Court of the United States. In both cases the question was whether action could be brought in a foreign State upon a judgment obtained against the director in the State of charter. How far the *dictum* in *Huntington v. Attrill* will be followed when the question is actually presented in the Supreme Court of the United States it is difficult to say. It is naturally followed in the inferior Federal courts.⁵⁶

§ 452. Enforcement of judgment against the director.

A proceeding against a director in such a case, though an action for a penalty, is not a criminal proceeding; and if action

⁵⁵ *Huntington v. Attrill*, 146 U. S. 657, 36 L. ed. 1123.

⁵⁶ *First Nat. Bank v. Weidenbeck*, 97 Fed. 896.

is brought against the director and judgment obtained in the State of charter, the judgment will be enforced everywhere. The original claim, which was not enforceable in a foreign State, is merged in the judgment; and that being an ordinary judgment *inter partes*, effect is given to it in a foreign State.⁵⁷ By this method the director may always be reached, if the incorporating State will have it so; for even if the director is not an inhabitant of that State, a valid judgment may be had against him under a statute providing that any member of the corporation shall be subject to the jurisdiction of the courts of the State. Judgment having been obtained in the State of charter may then be enforced anywhere. No injustice is done, therefore, by the refusal of a foreign State to enforce such provisions.

§ 453. Statutory refusal to enforce individual liability.

In New Jersey it is provided by statute that "No action or proceeding shall be maintained in any court of this state against any stockholder, officer or director of any domestic corporation for the purpose of enforcing any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country.

"No action or proceeding shall be maintained in any court of law of this state against any stockholder, officer or director of any domestic or foreign corporation by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or

⁵⁷ *Huntington v. Attrill*, 146 U. S. 657, 36 L. ed. 1123, reversing *Attrill v. Huntington*, 70 Md. 191.

contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country, and no pending or future action or proceeding to enforce any such statutory personal liability shall be maintained in any court of this state other than in a nature of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be necessary parties." ⁵⁸

This statute has been held unconstitutional so far as it applies to a liability incurred prior to the act.⁵⁹

§ 454. Procedure regulated by law of form.

The plaintiff who chooses to bring suit against a stockholder in a foreign State must pursue the procedure provided in that State; he cannot claim the privilege of suing without using the form in which suit is to be brought.⁶⁰ Thus if he files a creditors' bill against the stockholder, and by the local practice such a bill will not lie until judgment has been obtained against the corporation within the State and execution issued and returned unsatisfied, the bill will be dismissed if no judgment has been obtained against the corporation.⁶¹ But since the effect of such a rule of procedure would often be that the creditor, not being able to serve process on the corporation within the jurisdiction, must go without remedy, the presumption would seem to be against applying such a rule of procedure, required in the case of a domestic corporation, to a suit against a stockholder in a foreign corporation. And the better view appears to be that where prior judgment against a corporation is made a condition to suit against a

⁵⁸ N. J. Corp. Supp. § 131.

⁵⁹ *Western Nat. Bank v. Reckless*, 96 Fed. 70; *Western Nat. Bank v. Skillman*, 21 N. J. L. J. 375.

⁶⁰ *Drinkwater v. Portland Mar. Ry.*, 18 Me. 35.

⁶¹ *Globe R. M. Co. v. Ballou*, 42 Fed. 749; *Turner v. Ala. M. & M. Co.*, 25 Ill. App. 144; *Jessup v. Carnegie*, 80 N. Y. 441; *Rocky Mountain Nat. Bk. v. Bliss*, 89 N. Y. 338.

stockholder the provision applies only in case of a domestic corporation; and that a stockholder in a foreign corporation, if he might otherwise be sued, may be sued without first obtaining within the jurisdiction a judgment against the corporation.⁶²

§ 455. Statute of limitations.

It is common to find a special statute of limitations provided for the enforcement of individual liability. Such a statute may be an independent rule of procedure, limiting the right to sue, or it may be a condition attached to the very existence of a statutory right. Which kind of statute a particular statute of limitations is, is a question of interpretation; and indeed a single statute may be both a rule of procedure as to all rights of the sort by whatever law created, and a condition limiting the exercise of the right in the case of a domestic corporation.

If a statute of limitations is to be interpreted as a rule of procedure, it is applicable not only to actions to enforce the liability of members of a domestic corporation, but also to actions to enforce such liability in the case of foreign corporations; being a matter of procedure, the law of the forum applies to all actions of the sort brought within the State.⁶³ If on the other hand the statute limits the right, it applies to all actions to enforce the liability created by the statute, wherever brought. "Courts . . . treat limitations of time as standing like other limitations, and cutting down the defendant's liability wherever he is sued."⁶⁴ And a statute cutting down the right by limiting the time within which action may be brought to enforce it may be passed by the State of charter even after the right has accrued. Such a statute would properly

⁶² *Howarth v. Angle*, 162 N. Y. 179, 56 N. E. 489; *Brice v. Munro*, 12 Ont. App. 453.

⁶³ *Platt v. Wilmot*, 193 U. S. 602; *Hobbs v. Nat. Bank of Commerce*, 96 Fed. 396.

⁶⁴ *Holmes, J.*, in *Davis v. Mills*, 194 U. S. 451.

be enforced within the State; and it has been held that it applies to an action outside the State to enforce the liability, and that so applied it is not unconstitutional.⁶⁵

§ 456. Suit for contribution.

When one stockholder or director is obliged to satisfy a claim against the corporation, because of his statutory liability to do so, a claim for contribution from his fellow-stockholders or fellow-directors arises which may be enforced in any jurisdiction.⁶⁶

⁶⁵ *Davis v. Mills, supra.*

⁶⁶ *Allen v. Fairbanks*, 45 Fed. 445; (but see *Sayles v. Brown*, 40 Fed. 8); *Nickerson v. Wheeler*, 118 Mass. 295.

TITLE V.
OF THE TAXATION OF CORPORATIONS.

CHAPTER XIX.

GENERAL PRINCIPLES OF TAXATION.

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| <p>§ 461. Scope of title: incidence of taxation upon both domestic and foreign corporations.</p> <p>462. Jurisdiction to tax: person, property and acts.</p> <p>463. Constitutional provisions: complete taxation.</p> <p>464. Power to exempt from taxation.</p> <p>465. Constitutional provisions: equality of taxation.</p> | <p>§ 466. Discriminating tax.</p> <p>467. Instrumentalities of the Federal government.</p> <p>468. Patents and copyrights.</p> <p>469. Double taxation.</p> <p>470. Separate taxation for State and local purposes.</p> <p>471. State boards of valuation.</p> <p>472. Foreign corporations.</p> |
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§ 461. Scope of title: incidence of taxation upon both domestic and foreign corporations.

This title does not purport to contain the whole law regarding the taxation of corporations. The object of it is to set forth such statutory and common law as is useful for a person in one State to know about the tax laws of another State. All consideration, therefore, of machinery for assessment and of procedure for collection of taxes is out of place. Nor is it desirable to examine the rules for the division of the proceeds of taxation between different localities.

How far it is desirable to include the rules for the taxation of special corporations, such as railroads and telegraph companies, which are in most States dealt with by themselves and not in accordance with the general rules, is hard to deter-

mine. It will no doubt be found that no logical method of settling the question has been selected; but on the whole the desire has been to go into the particulars of such taxation only in so far as it illustrates general principles, and therefore bears upon the problems of taxation of ordinary corporations.

Nor is any consideration given to assessment for local improvements. While this is a kind of taxation, it has no special connection with corporations, foreign or domestic, and falls outside the scope of this book.

The object of this Title is twofold; first, to enable one who is desirous of forming a corporation to know in what State the corporation may be formed with the least burden of taxation, or one who is or intends to become a stockholder to know what is the burden of taxation upon the corporation in question; secondly, to enable the members of a corporation to know what will be the burden of taxation upon the corporation if it engages in business in another State. For the first purpose it is necessary to study the rules for the taxation of domestic corporations; for the second, the rules for the taxation of foreign corporations. In brief, then, the scope of the Title is the study of the incidence of taxation upon both domestic and foreign corporations.

As to the taxation of foreign corporations there is no choice; all foreign corporations are treated alike.¹ It is impossible, therefore, by choosing one State of incorporation rather than another, to affect the burden of taxation in any other State. But the burden of taxation of domestic corporations differs greatly in the different States; and it is, therefore, one of the matters legitimately to be considered in choosing a place of incorporation. The taxation levied on the property and the privileges of a corporation, which it ought not to escape, is imposed wherever it has property and does business; and this taxation it cannot escape by choosing one State rather than

¹ See an exception to this general statement in the retaliatory legislation of several States, collected in Chapter VI.

another for its place of incorporation. The taxation which depends on the choice of a place of incorporation is merely that which is imposed in return for the permission granted by the State to become a corporation; and there is no ethical or legal impropriety in purchasing such permission at the lowest price for which it is offered.

§ 462. Jurisdiction to tax: persons, property and acts.

The jurisdiction of a State to levy taxes, like jurisdiction in general, depends in the last analysis on power. A State may lay a tax on anything from which it has power to exact payment. It may tax all persons domiciled within its territory, all property situated within its territory, and all acts done within its territory. As Mr. Justice Field said:²

“The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises, or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though, as applied to them, the taxation may be exercised in a great variety of ways. It may touch property in every shape, in its natural condition, in its manufactured form, and in its various transmutations. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the Federal Constitution, the power of the state as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction.”

The corporation as a person, not being able to leave the State of charter and become domiciled in a foreign State, cannot be taxed except by the State which created it; but

² State Tax on Foreign-Held Bonds, 15 Wall. 300, 21 L. ed. 179.

the power of taxation in that State is complete. The property of the corporation is within the jurisdiction of the State in which it is situated, and may there be taxed. Such property may be tangible or intangible. Just what intangible property may be said to exist and where it is situated are questions of difficulty which must be considered at length; but the power to tax such property wherever it really exists is undoubted. The privilege of acting may be taxed by any State which grants the privilege; unless indeed the State is by the Constitution of the United States required to permit the act, in which case there is nothing to tax.

It is to be noticed that any statute levying a tax which is passed by a legislature will be enforced unless such legislation is either outside the jurisdiction of the State or forbidden by the Constitution. Further, the form of the statute has no bearing upon the right of the legislature to pass it. A statute may therefore be passed, purporting to be a tax on a foreign corporation as a person; but if it is in substance levied upon the property of the corporation within the State or upon the privilege of doing business within the State the statute is valid. So a tax which purports to be levied upon property may be valid as a tax on the organization of a domestic corporation, or on the business of a foreign corporation;³ and conversely a tax which purports to be a franchise tax may be essentially a tax on property.⁴ In short the legality of a tax act depends on the substance of it rather than on its form.

§ 463. Constitutional provisions: complete taxation.

By the Constitutions of many States, all property of a corporation is subject to taxation. A typical article is that of the Constitution of Ohio, providing that "The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individ-

³ See for instance *P. v. Equitable Trust Co.*, 96 N. Y. 387.

⁴ See for instance *Miller, J.*, in *Western U. Tel. Co. v. Massachusetts*, 125 U. S. 530, 547, 31 L. ed. 790.

uals.”⁵ Such a provision would of itself, it seems, prevent a legislature from granting exemptions from taxation not justified by express provision of the Constitution.⁶ But in some States the legislature is expressly forbidden to exempt. “No property shall be exempt from taxation except as provided in this Constitution; and every grant of a franchise privilege or exemption shall remain subject to revocation, alteration or amendment.”⁷ “The power to tax corporations and corporate property shall not be surrendered or suspended by act of the general assembly.”⁸ “The power to tax corporations or corporate property shall never be relinquished or suspended.”⁹ “The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party.”¹⁰

“The legislature shall have no power to release or discharge any . . . corporation . . . from . . . its proportionate share of taxes to be levied for State purposes, or due any municipal corporation, nor shall commutation from such taxes be authorized in any form whatever.”¹¹

⁵ Const. Ohio, Art. 13, § 4. See to the same effect Ala. Const. Art. 11, § 6; Cal. Const. Art. 13, § 1; Colo. Const. Art. 10, § 10; Ga. Code, § 777; Idaho Const. Art. 7, § 2; Ill. Const. Art. 9, § 1; Iowa Const. Art. 8, § 2; Ky. Const. § 174; Miss. Const. § 181; Mont. Const. Art. 12, § 7; Neb. Const. Art. 9, § 1; Nev. Const. Art. 8, § 2; Tex. Const. Art. 8, § 1; Utah Const. Art. 13, § 10; Wash. Const. Art. 7, § 3; W. Va. Const. Art. 10, § 1.

⁶ *South Covington & C. St. Ry. v. Bellevue*, 105 Ky. 283, 49 S. W. 23; *Railroad v. Adams*, 77 Miss. 194, 24 So. 215.

⁷ Ky. Const. § 3.

⁸ Mo. Const. Art. 10. To the same effect Col. Const. Art. 10, § 9; La. Const. Art. 228; so “the general assembly shall not pass any local or special law exempting property from taxation,” *ibid.* Art. 48.

⁹ Mont. Const. Art. 12, § 7; to the same effect, Idaho Const. Art. 7, § 8.

¹⁰ Pa. Const. Art. 9, § 3. To the same effect, Ark. Const. Art. 16, § 7; Cal. Const. Art. 13, § 6; Ga. Const. Art. 7, § 2, par. 5; S. Dak. Const. Art. 11, § 3; Texas Const. Art. 8, § 4; Wash. Const. Art. 7, § 4. The same, adding after “the State” the words “or any political subdivision thereof,” Miss. Const. § 182. Adding “or any county or other municipal corporation,” N. Dak. Const. Art. 11, § 178; Wyo. Const. Art. 15, § 14.

¹¹ Neb. Const. Art. 9, § 14.

§ 464. Power to exempt from taxation.

In the absence of such provisions against exemption, a State may, it would seem, grant such exemptions from taxation as it pleases;¹² and in several States there are special provisions granting such exemptions. Thus in Delaware "the general assembly may by general laws exempt from taxation such property as in the opinion of the general assembly will best promote the public welfare,"¹³ and in Mississippi and Louisiana manufactories, railroads, or other enterprises of public utility may be exempted.¹⁴ In accordance with this policy several States have exempted from taxation for ten years manufacturing establishments to be erected in a town.¹⁵

An exemption once absolutely made becomes a contract, and cannot be withdrawn by the State.¹⁶ It is usually provided in the charter that the provisions of it (in which the exemption from taxation is usually found) shall be subject to amendment; and such exemptions are sometimes withdrawn by a general law,¹⁷ though on the other hand after a change of general policy by the State existing exemptions may be preserved.¹⁸ An exemption granted in the State of charter can have no force, of course, in another State.¹⁹ And

¹² It will be noticed that the following States have no constitutional provision against exemption from taxation: Conn., Del., Fla., Ind., Kan., Me., Md., Mass., Mich., Minn., N. H., N. J., N. Y., N. Car., Ore., R. I., S. Car., Tenn., Vt., Va., Wis.

¹³ Del. Const. Art. 8, § 1.

¹⁴ La. Const. Art. 230; Miss. Const. § 182; 1900, ch. 48, § 1.

¹⁵ N. H. Stat. ch. 55, § 11; R. I. Gen. L. ch. 44, § 5. The period of exemption is five years, and the establishments are for the manufacture of cloth or ships: Ala. 1901, No. 115f, § 2. The town cannot extend the exemption for a second period: *Boody v. Watson*, 63 N. H. 320.

¹⁶ *Raleigh & G. R. R. v. Reid*, 13 Wall. 269, 20 L. ed. 570; *Winona & S. P. R. R. v. County*, 3 Dak. 1, 12 N. W. 561; *St. v. Dexter & N. R. R.*, 69 Me. 44. "The impolicy of this legislation is apparent, but there is no relief to the state, for the rights secured by the contract are protected from invasion by the constitution of the United States." *Davis, J., in Raleigh & G. R. R. v. Reid, supra.*

¹⁷ Vt. Stat. § 594.

¹⁸ Del. 1901, ch. 15, § 19.

¹⁹ *P. v. Coleman*, 135 N. Y. 231, 31 N. E. 1022.

so an exemption of the taxation of State bonds by the debtor State cannot exempt the bonds from taxation in another State.²⁰

§ 465. Constitutional provisions: equality of taxation.

It is often provided that taxation shall be "equal and uniform,"²¹ "so that every person and corporation shall pay a tax in proportion to the value of his, her or its property."²² In Massachusetts it is provided that taxes shall be "proportional and reasonable,"²³ and this has been held to prevent a tax upon the franchises and privileges of a corporation as a property tax.²⁴ This result is prevented in a few States by express provision. Thus in Illinois "the general assembly shall have power to tax . . . toll bridges, ferries, insurance, telegraph and express interests or business . . . and persons or corporations owning or using franchises or privileges in such manner as it shall direct by general law, uniform as to the class upon which it operates."²⁵ So in Kentucky "nothing in this Constitution shall be construed to prevent the general assembly from providing for taxation based on income, licenses or franchises;"²⁶ and in Idaho "the legislature may also impose a license tax (both upon natural persons and upon corporations, other than municipal, doing business in this State)."²⁷

In the absence of a special provision in the Constitution there is no requirement of equality in taxation. Even under that clause of the Fourteenth Amendment to the Constitution

²⁰ *Bonaparte v. Tax Court*, 104 U. S. 592, 26 L. ed. 845.

²¹ W. Va. Const. Art. 10, § 1; to the same effect, Ga. Const. Art. 7, § 2.

²² Ill. Const. Art. 9, § 1. To the same effect, Cal. Const. Art. 13, § 1; Ida. Const. Art. 7, § 2; Ky. Const. § 174; Neb. Const. Art. 9, § 1; Tex. Const. Art. 8, § 1; W. Va. Const. Art. 10, § 1.

²³ Mass. Const. Part II, Art. 4.

²⁴ *Com. v. Hamilton Mfg. Co.*, 12 All. (Mass.) 298.

²⁵ Ill. Const. Art. 9, § 1; Neb. Const. Art. 9, § 1.

²⁶ Ky. Const. § 174.

²⁷ Ida. Const. Art. 7, § 2.

of the United States which guaranties equal protection of the laws, a State may so adjust its tax system as to fall differently upon different classes of property, so long as all property of the same class, whether belonging to residents or to non-residents, is taxed equally.²⁸ "The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the fourteenth amendment, and in all cases it must appear, not merely that a classification has been made, but also that it is based on some reasonable ground,—something which bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection."²⁹

Even under a State constitution which provides that taxes must be equal and uniform, a classification of corporations into resident and non-resident, taxed at different rates, is based on a reasonable distinction and is valid.³⁰

§ 466. Discriminating tax.

A tax which improperly discriminates between different classes of taxable property may be unconstitutional as depriving the owner of the equal protection of the laws, or as taking property without due process of law. Thus while it is permissible for a State to exclude a foreign corporation from its borders, if it does admit the corporation it must tax its property on the same basis on which other property is taxed. "It seems to be utterly inconsistent with legal principles which have always been deemed axiomatic to hold that a government can recognize the legal existence of a foreign corporation for the purpose of taxation, and at the same time can deny such legal existence for the purpose of depriving it of those rights which belong to every individual

²⁸ *Bell's Gap R. R. v. Pa.*, 134 U. S. 232, 237, 33 L. ed. 892; *Home Insurance Co. v. New York*, 134 U. S. 594, 606, 33 L. ed. 1025; *Pacific Exp. Co. v. Seibert*, 142 U. S. 339, 35 L. ed. 1035; *New York v. Roberts*, 171 U. S. 658, 43 L. ed. 323.

²⁹ *McKenna, J.*, in *Magoun v. Bank*, 170 U. S. 283, 42 L. ed. 1037.

³⁰ *Blue Jacket Consol. Copper Co. v. Scherr*, 50 W. Va. 533, 40 S. E. 514.

or company known to the law. Such a doctrine would obviously offer the entire property of a foreign corporation as a prize to the rapacity of any State in whose territory it might be or over which it might happen to be carried.”³¹

But the right to classify subjects of taxation and to impose a tax on each class is undoubted.

The real question is whether the discrimination between different classes of property is based on reason. “We need not repeat the commonplaces as to the large latitude allowed to the States for classification upon any reasonable basis.³² What is reasonable is a question of practical details, into which fiction cannot enter. Practically, the law before us, in the broad aspect in which alone we are asked to consider it, seems to us to work out substantial justice and equality.”³³ And it was held proper, in taxing corporate stock, to exempt from taxation stock in a corporation which had already paid a tax to the State upon its corporate assets.³⁴ A careful consideration of the question may be found in *Blue Jacket Consolidated Copper Company v. Scherr*.³⁵

§ 467. Instrumentalities of the Federal government.

Of course a State cannot tax or otherwise control the property of the Federal government, or the instrumentalities by which its powers are carried out.³⁶ “As held in *McCulloch v. Maryland*”³⁷ the States have no power by taxation to impede, burden, or in any manner control the operation of the

³¹ *Erie Ry. v. State*, 31 N. J. L. 531, 86 A. D. 226.

³² Citing *Pacific Exp. Co. v. Seibert*, 142 U. S. 339, 351, 352, 35 L. ed. 1035, 1039; *Gulf, C. & S. F. R. R. v. Ellis*, 165 U. S. 150, 155, 41 L. ed. 666, 668; *Nicol v. Ames*, 173 U. S. 509, 521, 43 L. ed. 786, 793; *Atchison, T. & S. F. R. R. v. Matthews*, 174 U. S. 96, 43 L. ed. 909; *American Sugar Ref. Co. v. Louisiana*, 179 U. S. 89, 45 L. ed. 102.

³³ *Holmes, J., in Kidd v. Alabama*, 188 U. S. 730, 47 L. ed. 669.

³⁴ *Kidd v. Alabama*, *supra*.

³⁵ 50 W. Va. 533, 40 S. E. 514; *infra*, § 562.

³⁶ *Horn Silver Mining Co. v. New York*, 143 U. S. 305, 36 L. ed. 164 (*semble*).

³⁷ 4 Wheat. 316, 436, 4 L. ed. 579.

constitution and laws enacted by Congress to carry into execution the powers vested in the general government; a doctrine which, applied in *Weston v. City Council*,³⁸ annulled a tax levied by the authority of a law of South Carolina on stock issued for loans to the United States. Nor can this inhibition upon the States be evaded by any change in the mode or form of the taxation, provided the same result is effected; that is, an impediment is thereby interposed to the exercise of a power of the United States. That which cannot be accomplished directly cannot be accomplished indirectly. Through all such attempts the court will look to the end sought to be reached; and if that would trench upon a power of the government, the law creating it will be set aside, or its enforcement restrained.”³⁹

For this reason a State cannot tax a franchise conferred upon a State corporation by the United States.⁴⁰

But this exemption from taxation does not go so far as to prevent the ordinary taxation of the property of the corporation. Thus where an act of Congress confers special privileges on such telegraph companies as accept the provisions of the act and in turn requires certain services from the companies, making them post roads, a State may tax such a company upon such a proportion of its entire corporate assets as is invested in telegraph lines within the State.⁴¹ In the case of *Western Union Telegraph Company v. Massachusetts*,⁴² Mr. Justice Miller said: “While the State could not interfere by any specific statute to prevent a corporation from placing

³⁸ 2 Pet. 449, 7 L. ed. 481.

³⁹ Field, J., in *Home Insurance Co. v. New York*, 134 U. S. 594, 33 L. ed. 1025.

⁴⁰ *California v. Central Pacific R. R.*, 127 U. S. 1, 32 L. ed. 150; *Atlantic & P. Tel. Co. v. Philadelphia*, 190 U. S. 160, 47 L. ed. 995.

⁴¹ *Western Union Tel. Co. v. Massachusetts*, 125 U. S. 530, 31 L. ed. 790; *Western Union Tel. Co. v. Missouri*, 190 U. S. 412, 47 L. ed. 1116; but see *Postal Tel. Cable Co. v. Richmond*, 99 Va. 102, 3 Va. Sup. Ct. Rep. 39, 37 S. E. 789.

⁴² 125 U. S. 530, 31 L. ed. 790.

its lines along these post roads, or stop the use of them after they were placed there, nevertheless, the company receiving the benefit of the laws of the State for the protection of its property and its rights is liable to be taxed upon its real or personal property as any other person would be."

So where a corporation is chartered by the United States, its property may be taxed by the State in which it lies. Thus the Union Pacific Railroad was taxed upon its road bed and other property within Nebraska. This tax was upheld, the court saying: "It cannot be that a state tax which remotely affects the efficient exercise of a Federal power is for that reason alone inhibited by the Constitution. To hold that would be to deny to the States all power to tax persons or property. Every tax levied by a State withdraws from the reach of Federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which Federal taxes may be laid. The States are, and they must ever be, co-existent with the national government. Neither may destroy the other. Hence the Federal Constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the States, or prevent their efficient exercise." ⁴³

§ 468. Patents and copyrights.

On this principle should be regulated the power of a State to tax patents and copyrights granted by the United States; and it should be held to be outside the power of a State, under the taxing power, to impede the exercise of the right, but quite within its power to tax the property which is the result of the right.

On this ground it was held in New York that the patent itself could not be taxed, though tangible property which was the fruit of the exercise of the right might be taxed.⁴⁴

⁴³ *Railroad v. Peniston*, 18 Wall. 5, 30, 21 L. ed. 787.

⁴⁴ *People v. Assessors*, 156 N. Y. 417, 51 N. E. 269, 42 L. R. A. 290 (see

§ 469. Double taxation.

Double taxation is forbidden, it would seem, by a constitutional provision requiring taxes to be in proportion to the value of the property;⁴⁵ and it is expressly forbidden by some States.⁴⁶ But in the absence of some express provision of law, while there will be a presumption against such an interpretation of a tax act as would lead to double taxation, it can be no objection to a clearly imposed tax that it results in double taxation.⁴⁷

Even if double taxation is expressly forbidden, this provision extends only to taxation of the same property twice in a single State; no law of one State can affect the legal right of another, and therefore there is nothing to prevent the same property being taxed by as many States as can get power over it. Thus the property and franchises of a corporation may be held and exercised in several States; and the value of them gives to the shares of stock their entire value. These shares may be in one State while the owner is domiciled in another. If all these States are different, the same property may be taxed four times without infringing the Constitution; the constitutional limitations extend only to double taxation in the same jurisdiction.⁴⁸ "No doubt it would be a great advantage to the country and to the individual states if principles of taxation could be agreed upon which did not conflict with each other, and a common scheme could be adopted by which taxation of substantially the same property in two jurisdictions could be avoided. But the Constitution of the United States does not go so far."⁴⁹ Double taxation of this

People v. Roberts, 159 N. Y. 70, 53 N. E. 685, 45 L. R. A. 126); *Com. v. Westinghouse Electric & Mfg. Co.*, 151 Pa. 265, 24 Atl. 1107.

⁴⁵ *Burke v. Badlam*, 57 Cal. 594; *Com. v. New York, L. E. & W. R. R.*, 150 Pa. 234, 24 Atl. 609.

⁴⁶ Cal. Polit. Code, § 3607.

⁴⁷ *Toll Bridge Co. v. Osborn*, 35 Conn. 7.

⁴⁸ *Sturges v. Carter*, 114 U. S. 511, 29 L. ed. 240; *San Francisco v. Fry*, 63 Cal. 470.

⁴⁹ *Holmes, J.*, in *Kidd v. Alabama*, 188 U. S. 730, 732, 47 L. ed. 669.

sort, however unjust, cannot be declared illegal unless it is contrary to some express constitutional provision.⁵⁰ "It is doubtless a hardship for him to pay taxes on the same property in two States. But the Massachusetts tax, even if valid, could not divest this State of its jurisdiction. The laws of Rhode Island are paramount in Rhode Island, and all the inhabitants of the State are subject to them without regard to the laws of any other State."⁵¹

§ 470. Separate taxation for State and local purposes.

The expenses of both State and local government must be met by taxation. This may be done in one of two ways: A single tax may be levied, either by the State or by a local taxing district, and the proceeds of the tax may be distributed to the various governmental agencies; or a separate tax may be levied by each political body which is to spend it. The latter is the method commonly adopted; and in most States, therefore, corporations pay a tax to the State and another to the counties or cities in which they own property or do business.

Such separate taxation, though it may be laid upon the same property in the same State, is not double taxation, and is in no way objectionable.

The property of a corporation is especially fitted for taxation by the State as a whole. Its real estate and tangible personalty may well be taxed locally; but its capital stock, franchises and good will, which often constitute the greater part of its property, are best assessed and taxed as a single unit. This assessment of the entire body of property of a corporation can best be done by the State.

§ 471. State boards of valuation.

In the case of a corporation doing business and owning

⁵⁰ *Griggory Const. Co. v. Freeman*, 108 La. 435, 32 So. 399; *State v. Branin*, 23 N. J. L. 484; *Dyer v. Osborne*, 11 R. I. 321, 23 A. R. 460.

⁵¹ *Durfee, C. J.*, in *Dyer v. Osborne*, *supra*.

property in many parts of the State, and especially in the case of a public service corporation, a State board is often provided to assess the value of the property, whether for State or for local taxation. In finding the facts as to value such a board acts in a judicial capacity, and so long as it acts within its authority its finding of facts cannot ordinarily be attached in another court unless in the regular course of appeal.⁵²

Thus in assessing the value of railroad property the valuation of the Board of Equalization (subject to appeal as provided by law) is conclusive in the absence of fraud; and this is constitutional. "The true cash value of the plaintiff's property in the state of Indiana in the year 1891 was a question of fact, the determination of which, for the purposes of taxation, was given to this special tribunal,—the state board. Whenever a question of fact is thus submitted to the determination of a special tribunal, its decision creates something more than a mere presumption of fact; and, if such determination comes into inquiry before the courts, it cannot be overthrown by evidence going only to show that the fact was otherwise than as so found and determined. Here the question determined by the state board was the value of certain property. That determination cannot be overthrown by the testimony of two or three witnesses that the valuation was other than that fixed by the board. It is true such testimony may be competent, and was received in this case because, taken in conjunction with other testimony, it might establish fraudulent conduct on the part of the board sufficient to vitiate its determination. It is not, however, contended by counsel that there was any actual fraud on the part of that board; that the individual members thereof deliberately violated the obligations of their oaths of office, and intentionally placed upon the property of the plaintiff a valuation which they knew to be grossly in excess of that which it in fact bore, and did

⁵² *Fargo v. Hart*, 193 U. S. 490; *La Salle & P. H. & D. R. R. v. Donoghue*, 127 Ill. 29, 18 N. E. 827.

so with the purpose of making the plaintiff bear a larger share of the burden of the support of the state government than it rightfully should."⁵³

In framing its rules and making its assessment the Board of Equalization is presumed to have acted fairly,⁵⁴ and it has the right to compute the value of the capital stock in the first instance.⁵⁵ If, however, the action of the board is fraudulent, its action may be reviewed by the courts;⁵⁶ and so if it exceeded its jurisdiction, as by acting under an erroneous interpretation of law and thereby taxing property which was not legally taxable.⁵⁷

§ 472. Foreign corporations.

A foreign corporation is in general, as has been seen, taxed on all tangible personal property in the same manner as a domestic corporation; and it is properly and legally treated like any other owner of property, and taxed upon all tangible property, real or personal, situated within the jurisdiction of the taxing power.⁵⁸ It is, of course, always a question whether a foreign corporation comes within the language of a statute which imposes a tax; for such statutes are often so phrased as to exclude foreign corporations. A statute sub-

⁵³ Brewer, J., in *Pittsburgh, C. C. & S. L. Ry. v. Backus*, 154 U. S. 421, 38 L. ed. 1031.

⁵⁴ *Pacific Hotel Co. v. Lieb*, 83 Ill. 602.

⁵⁵ *Ottawa Glass Co. v. McCaleb*, 81 Ill. 556.

⁵⁶ *State Board of Equalization v. People*, 191 Ill. 528, 61 N. E. 339, 58 L. R. A. 513.

⁵⁷ *Fargo v. Hart*, 193 U. S. 490; *La Salle & P. H. & D. R. R. v. Donoghue*, 127 Ill. 29, 18 N. E. 827.

⁵⁸ *W. U. Tel. Co. v. Texas*, 105 U. S. 460, 26 L. ed. 1067; *Atlantic & P. Tel. Co. v. Philadelphia*, 190 U. S. 160, 47 L. ed. 995; *Armour Packing Co. v. Savannah*, 115 Ga. 140, 41 S. E. 237; *Griggory Const. Co. v. Freeman*, 108 La. 435, 32 So. 399; *Blackstone Mfg. Co. v. Blackstone*, 13 Gray (Mass.), 488; *Attorney-General v. Bay State Mining Co.*, 99 Mass. 148, 96 A. D. 717; *Boston Loan Co. v. Boston*, 137 Mass. 332; *British Comm. L. Ins. Co. v. Commissioners*, 31 N. Y. 32; *People v. Barker*, 141 N. Y. 118, 35 N. E. 1073, 23 L. R. A. 95.

jecting "non-residents" to taxation on the sums invested in business includes foreign corporations;⁵⁹ while on the other hand a statute providing for taxation of personal estate in the city where the owner is an "inhabitant" does not render the property of a foreign corporation liable to taxation, since it is not an inhabitant of any place within the State.⁶⁰ So where the cars of a railroad company were by statute taxable at the home office or principal place of business of the company, the cars of a foreign railroad company could not be taxed, since its principal place of business was outside the State.⁶¹

In Massachusetts, where a domestic corporation is locally taxable only on its real estate and machinery, "every foreign corporation which is subject to the provisions of this act shall be subject to taxation upon all real estate, machinery and merchandise owned by it and situated in this commonwealth by the city or town in which such property is situated."⁶²

A retaliatory tax may be laid upon a foreign corporation, as the following:

When, by the laws of any other State or nation, any other or greater taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon corporations of this State, doing business in such other State or nation, or upon their agents therein, than the laws of this State impose upon their corporations or agents doing business in this State, so long as such laws continue in force in such foreign State or nation, the same taxes, fines, penalties, licenses, fees, obligations and requirements of whatever kind shall be imposed upon all corporations of such other State or nation doing business within this State and upon their agents here; *provided*, that

⁵⁹ *People v. Barker*, 141 N. Y. 118, 35 N. E. 1073, 23 L. R. A. 95; *People v. Feitner*, 62 N. Y. Supp. 1107, 49 App. Div. 108.

⁶⁰ *Boston Investment Co. v. Boston*, 158 Mass. 461, 33 N. E. 580.

⁶¹ *Appeal Tax Court of Baltimore v. Pullman P. C. Co.*, 50 Md. 452.

⁶² Mass. 1903, ch. 437, § 71.

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nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporations of other States or nations transacting business in this State.⁶³

⁶³ Del. 1903, Franchise Tax, § 9; Nev. 1903, ch. 121, § 106; N. J. P. L. 1894, pp. 346, 446; Corp. Supp. § 101.

CHAPTER XX.

TAXATION OF TANGIBLE PROPERTY.

§ 481. Situs and taxation of real estate.	within the State: property in transit.
482. Real estate and franchise as a unit.	§ 490. What property is situated within the State: vessels.
483. Taxation of tangible personal property.	491. What property is situated within the State: rolling-stock of railways.
484. Place of taxation of chattels.	492. What property is situated within the State: property temporarily in the State.
485. What is tangible property: income.	493. What property is situated within the State: credits in the hands of agents.
486. What is tangible property: stock and bonds.	494. What property is situated within the State: mortgage debts.
487. What is tangible property: money.	
488. What is tangible property: credits.	
489. What property is situated	

§ 481. Situs and taxation of real estate.

Real estate, which has a fixed local *situs*, can most effectively be taxed by itself in the local taxing district where it lies; and this is the method usually employed for taxing the real estate of corporations.

This would undoubtedly be the rule if there were no express statute regulating the matter; but in most States the taxation of real estate of either domestic or foreign corporations in the place where it is situated is especially provided for.¹

¹ Ark. Stat. § 6402; Cal. Const. Art. 13, § 1, Pol. Code, § 3617; Ga. Code, 1895, § 767; Hawaii Laws, 1897, §§ 817, 830; Kan. Gen. Stat. ch. 158, § 1; Ky. 1902, ch. 128, Art. 1, § 2, Art. III, § 9; La. R. S. § 733; Md. Gen. L. Art. 81, § 21; Me. R. S. ch. 6, § 14, cl. 3; Minn. Gen. Stat. 1894, § 1508; Mont. Const. Art. 12, § 17, Pol. Code, § 3711; Neb. Stat. § 3897; N. J. Corp. Supp. § 101; N. Y. Tax L. § 11; N. Dak. 1897, ch. 126, § 2; Oh. Rev. Stat.

In Massachusetts and Iowa machinery is taxed with the real estate and as part of it.² In New York a corporation having a franchise in the public streets is taxed on the franchise where it is exercised as real estate.³ In several States the ordinary roadbed of a railroad is not assessed locally as real estate;⁴ and in a few States the real estate of corporations used in the business is not assessed locally, but only as part of the capital stock, unless the corporation is not taxed on its corporate stock.⁵ In these cases any real estate not used in the ordinary business of the corporation is locally taxed.⁶

In several States it is provided that where land is exempted from local taxation, improvements on the land shall be taxed.⁷

§ 482. Real estate and franchise as a unit.

Under a statute providing for the taxation of the tracks, stations, etc., of a railroad as part of its real estate in the towns through which the road ran, it was held that all elements should be valued together as a single piece of property, the utmost limit of value being the cost of reproduction; and the earnings of the road could not be considered.⁸ O'Brien, J., said: "It is difficult to formulate from the adjudged cases any general rule or principle applicable in all cases to the valuation of the real estate of a railroad for the purpose of taxation. Cases may be found in the Federal courts containing strong expressions of opinion in favor of the rule adopted by the

§§ 2731, 2744; Ore. Misc. L. § 2739; S. Car. Rev. Stats. 1893, §§ 217, 250; Tenn. 1901, ch. 174, § 22; Tex. Rev. Stat. Art. 5061; Va. 1902, ch. 686, § 1; Wash. 1897, ch. 71, § 20; Wis. Rev. Stat. § 1034; N. Bruns. Consol. Stat. ch. 100, § 18; Nov. Scot. Rev. Stats. ch. 58, § 3.

² Mass. 1903, ch. 437, § 71; Ia. Code of 1897, § 1319.

³ N. Y. 1899, c. 712.

⁴ Const. N. Dak. § 179; Mich. Comp. L. § 3830, cl. 7, 1901, Act 44. *Contra*, Tex. Const. Art. 8, § 8.

⁵ Conn. Stat. § 3832; Mich. Comp. L. § 3830, 1901, Act 44.

⁶ Conn. Stat. § 3833; Mich. 1901, Act 44; N. H. Pub. Stat. ch. 55, § 6.

⁷ Minn. Gen. Stat. § 1510; N. Dak. 1897, ch. 126, § 4; Texas Rev. Stat. Art. 5063.

⁸ P. v. Clapp, 152 N. Y. 490, 46 N. E. 842, 39 L. R. A. 237.

state laws providing for the assessment of all the property of assessors. But these were cases involving the validity of railroads within the state, real, personal and mixed, including franchises, and the statute pointed out in terms the mode of assessment, which in some respects included the methods adopted in this case.⁹ Where the assessors have jurisdiction over all the property of the corporation within the state, whether it be real estate, capital stock, or franchises, they may deal with every element of value that constitutes property of the corporation, or enters into its earning or producing capacity. But in most cases in this state the assessors have jurisdiction only over a part of the corporate property; that is, the real estate. . . .¹⁰

"An assessment of the portion of the real estate of a railroad which is within the town, and subject to the jurisdiction of the assessors, upon the basis of the income or profits of the whole system of which it is a part, must necessarily include the use of franchises and personal property which are otherwise assessed, and hence such a principle of valuation must, in some measure at least, impose double taxation. It is doubtless within the power of the state to authorize such a method of assessment, but it has not attempted to exercise such a power. The real estate, the personal property, and the business and franchises are taxable under different statutes, and these three elements into which the corporate property is divided should not be commingled when it is reasonably possible to avoid it. When there is no question before the assessors save the value of that part of the real estate of a railroad which is within the town, the cost of replacing it will ordinarily furnish a just measure of valuation. . . .

"The real estate of a railroad in a town is not to be assessed as an isolated piece of land, but with reference to its position

⁹ *Pittsburgh, C. C. & S. L. Ry. v. Backus*, 154 U. S. 421, 38 L. ed. 1031; *Telegraph Co. v. Taggart*, 163 U. S. 1, 41 L. ed. 49.

¹⁰ A franchise cannot be considered in taxing real estate of a corporation locally. *P. v. Assessors*, 15 N. Y. St. Rep. 461.

as part of a line of railroad with all its incidents, including the business and profits to be derived therefrom. . . . The property in question would be worth practically nothing except for its position as part of a railroad system. It has a value as part of the whole property, and practically no value when detached or severed from it. But the question still remains, what is the reasonable and practical method of estimating that value?"

To the same effect the Supreme Court of Tennessee said:¹¹ "The value of the roadway at any given time is not the original cost, nor, *a fortiori*, its ultimate cost after years of expenditure in repairs and improvements. On the other hand, its value cannot be determined by ascertaining the value of the land included in the roadway assessed at the market price of adjacent lands, and adding the value of the cross-ties, rails, and spikes. The value of land depends largely upon the use to which it can be put, and the character of the improvements upon it. The assessable value for taxation of a railroad track can only be determined by looking at the elements on which the financial condition of the company depends,—its traffic, as evidenced by the rolling stock and gross earnings, in connection with its capital stock. No local estimate of the fraction in one county of a railroad track running through several counties can be based upon sufficient data to make it at all reliable, unless, indeed, the local assessors are furnished with the means of estimating the whole road."¹²

This point, that the whole property is to be valued together and for the purpose for which it is used, was held in Massachusetts, under the statute by which machinery is to be taxed locally with real estate.¹³ Chief Justice Field said: "The whole manufacturing plant of land, buildings, and machinery locally taxable has been found to be of more value if kept

¹¹ Quoted with approval in *Columbus S. R. R. v. Wright*, 151 U. S. 470, 38 L. ed. 238.

¹² *Franklin Co. v. R. R.*, 12 Lea (Tenn.), 521, 539.

¹³ *Troy C. & W. Manufactory v. Fall River*, 167 Mass. 517, 46 N. E. 99.

together and used for mill purposes than if the machinery is removed from the buildings, or the buildings with the machinery are removed from the land; and, as they all belong to the petitioner, we are of opinion that each of these items should be valued as it is used in its connection with the others.”¹⁴

On the other hand, where a statute provided for the assessment locally of telegraph lines, including the poles and the interest in the land on which the poles stand, it was held that the poles and wires should be valued as mere chattels, and the value of the company's interest in the land, if any, added. Judge Peckham said: “Taking the cost of the production of those articles, which are in their nature personal property, and capable of infinite production, as above described, and adding to that cost the value of the interest in the land on which the poles stand and the value of the right to erect such poles on the land, upon the principles above indicated, and we have the total elements entering into the full and true value of the property of the company subject to taxation under the act of 1886 above cited. In the assessment for taxation under that act the property is not to be regarded as a part of a whole, nor as a complete telegraph line in operation. Its value for telegraph purposes, and its position, with its connections, and its productive capacity, are not considerations entering into the value of the property under the act last named. These considerations are foreign to its purpose. They largely enter into the question of the value of the business and the franchises of the company; and the value of such business and franchises is to be assessed under the act of 1881.”

The company, he added, did not own the land on which the poles stood, but had at most a revocable license to sue the land; and the case therefore differed from that of the taxation of railroads. “Most of this property, it is seen, is personal property, and it is called land although the poles are placed in streets which do not belong to the company, and

¹⁴ See also *Lowell v. Comrs.*, 152 Mass. 372, 25 N. E. 469, 9 L. R. A. 356.

in which the company has, as we have seen, no interest of a strictly legal nature. The railroad or the bridge company on the contrary, does own the fee of the real estate upon which it places its superstructure of rails or bridge, and the question arises, What is the value of this real estate owned by the company upon which this superstructure has been placed, and which is used for railroad or bridge purposes? That question involves almost necessarily the inquiry as to the profitableness of the superstructure which has been placed thereon, and which forms part and parcel of the real estate upon which it is laid; and this can only be answered by regarding the real estate as part of a whole portion of real estate devoted to the railroad or bridge purpose. The land—the portion of the earth on which the rails rest—is owned by the company, and the company to that extent has a monopoly. This land cannot be increased or reproduced. The structure, having been placed on it, becomes a part of it, and it must all be appraised at its full value as an integral part of a whole or completed instrument created for the purpose of realizing pecuniary profit. The cost of each particular portion of real estate, while one element to be considered for the purpose of determining the question of profits, cannot, in the nature of the property, be regarded as the one important consideration for the purpose of arriving at its full value for taxation. Without continuing the comparison further, it seems to me there is a clear, radical, and important difference in the very nature of the properties to be taxed, and which should lead to a different rule in the assessment of what is in fact real estate or earth in the one case and personal property in the other, although called 'land.' ”¹⁵

§ 483. Taxation of tangible personal property.

True taxation of a chattel as property must be at its *situs*, as there alone can the State control it.¹⁶ Every chattel within

¹⁵ *People v. Dolan*, 126 N. Y. 166, 27 N. E. 269, 12 L. R. A. 251.

¹⁶ *Hoyt v. Comrs.*, 23 N. Y. 224; *Varner v. Calhoun*, 48 Ala. 178.

a State may properly be made by taxation to pay its share of the expenses of the State. But since a State has full control of every person domiciled within it, and may properly exact by taxation, in return for its protection of him, an amount based upon his wealth, a State may properly tax a man at his domicile upon the value of his personal property wherever situated.¹⁷ The value of his real estate might, of course, be included in the estimate of his wealth; but since the protection of the State can never by any possibility be invoked for foreign land it is the almost universal habit even of States which tax persons at their domicile upon their whole personal estate to refrain from taxing them upon their foreign real estate.

In accordance with this jurisdiction and practice, States usually tax all corporations locally upon their tangible personal property held within the State; and frequently also tax domestic corporations upon personal property situated abroad.

"All . . . personal property of every corporation shall be taxed the same as the . . . personal property of an individual."¹⁸ "All real and personal estate whether owned by individuals or corporations, resident or non-resident, is liable to taxation."¹⁹ "The personal property of every private corporation is liable to taxation unless otherwise specially provided."²⁰ The same result is often attained by a more general provision, such as "all property, real, personal or mixed, not expressly exempted, is taxable" locally.²¹

Any such general provisions would undoubtedly cover the

¹⁷ *Com. v. Union Refrig. Co.*, (Ky.) 80 S. W. 490.

¹⁸ N. J. Corp. Supp. § 101; to the same effect, Ky. 1902, ch. 128, Art. III, § 9; La. Rev. Stat. § 733; Mich. 1893, ch. 6, § 11; Mo. Rev. Stat. § 7538; S. Car. Rev. Stat. 1893, § 250; Tenn. 1901, ch. 174, § 22; Wash. 1897, ch. 71, § 20; Ont. Rev. Stat. 1897, ch. 224, § 39.

¹⁹ Ga. Code, 1895, § 767. To the same effect, Ohio Rev. Stat. § 2731; Nova Scot. Rev. Stat. ch. 58, § 3.

²⁰ Ore. Misc. L. § 2744. To the same effect, Cal. 1899, ch. 80; Hawaii Laws, 1897, § 830; Nev. 1891, ch. 99, § 13; Minn. Gen. Stat. 1894, § 1508; Mont. Pol. Code, § 3711.

²¹ Texas Rev. Stat. Art. 5061. To the same effect, Wis. Rev. Stat. §§ 1034, 1040; Neb. Stats. § 3897; S. Car. Rev. Stat. 1893, § 217.

taxation of chattels within the State of foreign corporations; but this is often expressly provided for.²² And in a few States the taxation of all chattels of domestic corporations, wherever situated, is required. "All . . . personal estate within this State, and all personal estate . . . of all corporations organized under the laws of this State, whether the property be in or out of this State . . . shall be subject to taxation."²³

§ 484. Place of taxation of chattels.

Chattels are usually taxed locally at the principal office of the company²⁴ (or if there be no principal office in the State, then at the place in the State where the corporation through its agents does business);²⁵ or else at the place where the property itself is situated.²⁶

§ 485. What is tangible property: income.

Income in money is of course tangible property, and may be taxed as such. A direct tax may be laid (in the absence of constitutional restriction) upon the proceeds of the business, as for instance on its gross receipts. Thus an insurance company may be taxed upon the amount of premiums received within the State.²⁷ And in general a foreign corporation may be taxed on all income received by the corporation within the jurisdiction.²⁸

²² Ore. 1901, p. 142; Ga. Code, 1895, § 767; Hawaii Code, 1897, § 828.

²³ Ky. 1902, ch. 128, Art. 1, § 2. To the same effect, N. Dak. 1897, ch. 126, § 2; Minn. Gen. Stat. § 1508.

²⁴ Conn. Stat. § 3834; Ore. Misc. L. § 2744; N. Bruns. Consol. Stat. ch. 100, § 24; N. Y. Tax L. § 11; Wis. Rev. Stat. of 1898, § 1041.

²⁵ Mich. 1893, ch. 6, § 11; Neb. 1903, ch. 73, § 395; Wis. Rev. Stat. 1898, § 1040.

²⁶ Ind. Stat. 1894, § 8426; La. Rev. Stat. § 733; Mont. Pol. Code, § 3711; Nev. 1891 ch. 99, § 13; Tenn. 1901, ch. 174, § 2; Ore. Misc. L. § 2742, amended 1901, p. 142; Ida. Rev. Stat. § 1442.

²⁷ Liverpool Ins. Co. v. Massachusetts, 10 Wall. 566, 19 L. ed. 1029; McNall v. Met. Life Ins. Co., 65 Kan. 694, 70 Pac. 604.

²⁸ Re North of Scotland Can. Mtg. Co., 31 Up. Can. C. P. 552; Phoenix Ins. Co. v. Kingston, 7 Ont. 343.

§ 486. What is tangible property: stock and bonds.

Commercial securities, though not formerly regarded as chattels, and bonds, which are common-law specialties, are so far now regarded as tangible property as to be treated like chattels for the purpose of taxation. Bonds, certificates of stock, and promissory notes, are then regarded as tangible property in the place where they are found. "There is in this country a document the existence of which vouches and is necessary for vouching the title of some one to the foreign shares, so that in the absence of that document no one at all could establish a title to the share. It is found by the case that the certificates are currently marketable here as securities for that share and the dividends payable on that share; it is found, in fact, that the delivery of the certificate in this country *ipso facto* affects the title in a sense that it entitles the transferee to all the transferor's rights. It follows that the certificate itself has some operative power here, and it seems to me not to be within the ancient rule that a simple contract debt or mere evidences of a simple contract debt are supposed to exist only at the place of the debtor's residence. It being a marketable security operative, though not completely operative, to pass the title, and having a marketable value here, I think that it is itself a document which is a document of value." ²⁹ Any corporation, domestic or foreign, is therefore taxable in any State upon bonds, shares of stock, or other choses in action which are evidenced by mercantile securities actually within the State, including stocks, bonds, bank notes, promissory notes of individuals, etc.³⁰ So where municipal bonds, issued by the city of St. Louis and owned by a person domiciled in that city were *bona fide* kept permanently in New York, where the interest was payable, they were held to be taxable in New York and not in St. Louis.³¹

²⁹ Wright, J., in *Stern v. Queen*, [1896] 1 Q. B. 211.

³⁰ *New Orleans v. Stempel*, 175 U. S. 309, 44 L. ed. 174; *People v. Roberts*, 25 App. Div. 16, 49 N. Y. Supp. 10.

³¹ *Valle v. Ziegler*, 84 Mo. 214. But in California bonds of a foreign
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So where by statute a foreign insurance company is required to deposit bonds with the State as a condition of doing business, the bonds may be taxed.³² "It is a physical fact that these bonds are within the State. They are payable to the bearer and the legal title is evidenced by possession, and the property right which they represent passes by delivery. They have a market value, and are bought and sold in the market, and have so many of the characteristics of tangible personal property that ordinarily they would have a *situs* for the purposes of taxation, independent of the domicile of the complainant, their beneficial owner. . . . By the deposit of these bonds the insurance company pledges them for the payment of losses incurred by policy holders, and their negotiable character enables them to be readily disposed of for that purpose. Their negotiability, therefore, is not suspended or destroyed, but is always available for the purpose of their deposit. Every element of value in the bonds is employed not only to enable the company to comply with the law permitting it to do business, but to meet the exigencies of that business."³³

Such securities are expressly included in taxable personal property by most States. "All . . . bonds or stocks and other investments,"³⁴ or shares of stock specially named, with a general clause covering all things of value.³⁵ The most complete

corporation owned by a resident but permanently kept abroad were held taxable in California; and the court intimated that they could not appropriately be taxed elsewhere. *In re Fair's Estate*, 128 Cal. 607, 61 Pac. 184.

³² *Western Assur. Co. v. Halliday*, 110 Fed. 259, 127 Fed. 830; *People v. Home Ins. Co.*, 29 Cal. 533; *British C. L. I. Co. v. Comrs.*, 31 N. Y. 32; *State v. Fidelity & Deposit Co.*, (Tex. Civ. App.) 80 S. W. 544.

³³ *Thompson, Dist. J., in Western Assur. Co. v. Halliday*, 127 Fed. 830, 834, 835.

³⁴ Ill. Rev. Stat. ch. 120, § 1; Neb. Stats. § 4282. To the same effect, Ark. Stat. § 6402; Cal. Const. Art. 13, § 1, Pol. Code, § 3617; La. 1898, No. 170, § 91; Mo. Rev. Stat. § 9123; Mont. Const. Art. 12, § 17, Pol. Code, § 3680; N. Y. Tax L. § 2; Oh. Rev. Stat. § 2731; S. Car. Rev. Stat. § 28; Texas Rev. Stat. Art. 5067; Wash. 1897 ch. 71, § 8.

³⁵ Ala. Civ. Code, § 3911; Kan. Gen. Stat. ch. 158, § 3; Maine Rev. Stat. ch. 9, § 5; Md. Gen. L. Art. 81, § 2; Mich. Comp. L. § 3831; Minn. Gen. Stat. § 1510; N. H. Pub. Stat. ch. 55, § 7; N. Dak. 1897, ch. 126, § 4; Ore.

enumeration of such securities is made in Iowa. "Moneys, credits, and corporation shares of stock, except as otherwise provided, cash, circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States payable on demand, and circulating or intended to circulate as currency, notes, including those secured by mortgage, accounts, contracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, securities, debentures, bonds other than those of the United States, annuities, and corporation shares or stock not otherwise taxed in kind, shall be assessed as provided in this chapter."³⁶

Shares of stock are frequently exempted from taxation where the capital of the corporation is taxed.³⁷

§ 487. What is tangible property: money.

The doctrine that commercial securities have a *situs* has been carried so far that money deposited in a bank by the corporation or its agent, not for transmission to the home office but for use within the State, may, it is held, be taxed as property within the State.³⁸ This doctrine has been vigorously expressed by Judge Vann:³⁹ "What were his rights, or those of his successors, as against the state of New York, in view

Misc. L. § 2731; R. I. Gen. L. ch. 45, § 10; S. Dak. Const. Art. 11, § 4. See also Conn. Gen. Stat. §§ 2323, 2325; Del. 1898, ch. 25, § 2; Fla. 1898, ch. 4322, § 3; Ga. 1900, p. 21, § 8; Ida. Code, § 1313; Ky. 1902, ch. 128, Art. 2, § 16; Miss. Code, § 3751; Ut. Rev. Stat. §§ 2517, 2518; Vt. Stat. §§ 399, 400; Va. 1900, ch. 906; W. Va. Code, ch. 29, §§ 46, 47; Wis. Stat. §§ 1036, 1050, ¶ 11; Wyo. Rev. Stat. § 1763.

³⁶ Ia. Code of 1897, § 310.

³⁷ See the question of taxation of corporate securities considered in general later, Chap. XXIX.

³⁸ *New Orleans v. Stempel*, 175 U. S. 309, 44 L. ed. 174; *Blackstone v. Miller*, 188 U. S. 189, 47 L. ed. 439; *State Board of Assessors v. Comptoir Nat. d'Escompte*, 191 U. S. 388; *Bluefields Banana Co. v. Assessors*, 49 La. Ann. 43, 21 So. 627; *Re North of Scotland Can. Mtg. Co.*, 31 Up. Can. C. P. 552.

³⁹ *Matter of Houdayer*, 150 N. Y. 37, 44 N. E. 718, 55 A. S. R. 642, 34 L. R. A. 235.

of the command of its legislature that all property, or interest in property, within the state, susceptible of ownership, should be subject to a transfer tax upon the death of its owner whether he was a resident or non-resident? What was the real thing, the essence of the transaction, that gives rise to this controversy? The decedent brought his money into this state, deposited it in a bank here, and left it here until it should suit his convenience to come back and get it. While the commingling of funds may complicate administration, it does not change the facts as thus stated. If he had deposited *in specie*, to be returned *in specie*, there can be no doubt that the money would be property in this state subject to taxation. But, instead, he did as business men generally do, deposited his money in the usual way, knowing that, not the same, but the equivalent, would be returned to him upon demand. While the relation of debtor and creditor technically existed, practically he had his money in the bank, and could come and get it when he wanted it. It was an investment in this state subject to attachment by creditors. If not voluntarily repaid, he could compel payment through the courts of this state. The depository was a resident corporation, and the receiving and retaining of the money were corporate acts in this state. Its repayment would be a corporate act in this state. Every right springing from the deposit was created by the laws of this state. Every act out of which those rights arose was done in this state. In order to enforce those rights, it was necessary for him to come into this state. Conceding that the deposit was a debt; conceding that it was intangible, still it was property in this state for all practical purposes, and in every reasonable sense within the meaning of the Transfer Tax Act." ⁴⁰

"The fund has a *situs* here, because it is subject to our laws. A reasonable test in all cases, as it seems to me, is this: Where the right, whatever it may be, has a money value and can be

⁴⁰ *In re Romaine*, 127 N. Y. 80, 89, 27 N. E. 759, 12 L. R. A. 901.

owned and transferred, but cannot be enforced or converted into money against the will of the person owing the right without coming into this state, it is property within this state for the purposes of a succession tax. Thus the right in question is property, because it is capable of being owned and transferred. It is within this state, because the owner must come here to get it. It is subject to taxation, because it is under the control of our laws. It has a money value, because it is virtually money, or can be converted into money upon demand. It is subject to a transfer tax, because the passing, by gift or inheritance, of 'all property, or interest therein, whether within or without this state, over which this state has any jurisdiction for the purposes of taxation,' comes within the expressed intention of the legislature."

While this is undoubtedly the prevailing view, and represents an apparently irresistible tendency in the courts, it is technically open to grave objection. As Judge Gray, dissenting, said in the same case: "When the deceased made deposits with the trust company, they became the property of the depository and the relation which sprang up between them was that of debtor and creditor. The right of the decedent as a depositor was a mere chose in action. . . . To say that that constituted 'property' within the meaning of the act, would be to carry the doctrine of the inheritance laws too far for support in law or in reason."

When, however, the money is temporarily deposited subject to the check of a non-resident, it would seem not to be taxable under such a statute;⁴¹ and in some States it has been expressly provided by statute that such property should not be taxed. But in general money is taxable whether on hand or on deposit, though in the latter case it is commonly included under credits.

§ 488. What is tangible property: credits.

That money is a chattel is clear; but it is a long extension

⁴¹ *Clason v. New Orleans*, 46 La. Ann. 1, 14 So. 306.

of the ordinary notion of tangible property to include "credits." Yet in many States "money and credits" are coupled together as subjects of local taxation for all corporations.⁴²

From "credits" a person is usually allowed to deduct debts in good faith owed by him, with certain exceptions.⁴³ And it is well settled that choses in action, whether book accounts, promissory notes, or other credits due in the regular course of business carried on by a foreign corporation within a State, are taxable.⁴⁴

§ 489. What property is situated within the State: property in transit.

In order that a chattel may be taxed in a State it must have not only a momentary *situs* there, but it must be fixed there with some degree of permanence. Thus property merely in transit through the State may not be taxed in that State.⁴⁵ It is sometimes provided by statute that "property in *transitu*

⁴² Ala. Civ. Code, § 3911; Ark. Stat. § 6402; Cal. Const. Art. 13, § 1; Ill. Rev. Stat. ch. 120, § 1; Kan. Gen. Stat. ch. 158, § 12; La. 1898, No. 170, § 91; Mont. Const. Art. 12, § 17, Pol. Code, § 3680; Neb. Stat. § 4282; New M. Comp. L. § 4019; N. Y. Tax L. § 2; Ohio Rev. Stat. §§ 2744, 2731; S. Car Rev. Stat. 1893, § 217; Texas Rev. Stat. Art. 5067; Wash. Code, § 1657; Ont. Rev. Stat. 1897, ch. 224, § 2, cl. 10. So in Virginia, "bonds, notes, demands and claims," Va. 1890, ch. 244, § 8; see 1900, ch. 906.

See also Fla. 1898, ch. 4322, §§ 1, 3, 5; Ga. 1900, p. 21, § 8; Ky. 1902, ch. 128, Art. 2, § 16; Miss. Code, § 3751; Okla. Stat. § 5596; S. Dak. Stat. §§ 2134-2139; Utah Rev. Stat. §§ 2517, 2518; Vt. Stat. §§ 399, 400; Wis. Stat. §§ 1036, 1038; Wyo. Rev. Stat. § 1763.

⁴³ Hubbard v. Brush, 61 Oh. St. 252, 55 N. E. 829; Ia. Code, §§ 1309, 1310, 1311; Kan. Gen. Stat. ch. 158, § 16; N. Y. Tax Act, § 6; Ohio Rev. Stat. § 2730; Ont. Rev. Stat. of 1897, ch. 224, § 7, cl. 24.

⁴⁴ London, etc., Bk. v. Block, 117 Fed. 900; Armour Packing Co. v. Savannah, 115 Ga. 140, 41 S. E. 237; Hubbard v. Brush, 61 Oh. St. 252, 55 N. E. 829; People v. Barker, 48 N. Y. Supp. 553, 23 App. Div. 524; People v. Barker, 53 N. Y. Supp. 921, 31 App. Div. 263; Jesse French Piano & Organ Co. v. Dallas, (Tex. Civ. App.) 61 S. W. 942. See *contra*, Liverpool & L. & G. Ins. Co. v. Assessors, 44 La. Ann. 760, 11 So. 91, 16 L. R. A. 56.

⁴⁵ Kelley v. Rhoads, 188 U. S. 1, 47 L. ed. 359; Standard Oil Co. v. Bachelor, 89 Ind. 1; Conley v. Chedic, 7 Nev. 336; Robinson v. Longley, 18 Nev. 71.

to or from this State, used, held, owned or controlled by persons residing in this State" shall be taxed in the State.⁴⁶

§ 490. What property is situated within the State : vessels.

The problem is often presented by sea-going vessels and by the rolling-stock of railroads.⁴⁷ A vessel may not be taxed in a State at the ports of which it merely touches, even if it habitually touches at them.⁴⁸

"The State of California had no jurisdiction over these vessels for the purpose of taxation; they were not, properly, abiding within its limits, so as to become incorporated with the other personal property of the State; they were there but temporarily, engaged in lawful trade and commerce, with their *situs* at the home port, where the vessels belonged, and where the owners were liable to be taxed for the capital invested, and where the taxes had been paid."⁴⁹ And such vessels are liable to taxation at their place of registration, or if

⁴⁶ Ill. Rev. Stat. ch. 120, § 1; Neb. Stat. § 3897.

⁴⁷ It is interesting to compare with the common-law doctrines on this subject the language of the German Reichsoberhandelsgericht in *Mahler v. Schirmer*, 6 Entsch. des R. O. H. G. 80, s. c., translated 2 Beale's Cases on Conflict of Laws, 190: "The Saxon judge may therefore be in a position to subject to the claims of his local law the decision of lawsuits about movables; but the admissibility of such subjection always depends on the actual assumption that the things have come within the jurisdiction of the Saxon law. The things must be situated within Saxony. But the momentary position is not entirely decisive; there are things which are constantly changing their position without thereby losing their legal relation to the place from which they started. This is especially true of the most important instruments of transportation, ships and railroad trains. During their journeys they touch at foreign places only in passing, with the intention of returning to the place where their legal relations are situated. The recognition of this place of departure as the place that governs their legal relations seems to be enjoined by practical necessity."

⁴⁸ *Hays v. Pacific Mail S. S. Co.*, 17 How. 596, 15 L. ed. 254; *St. Louis v. Ferry Co.*, 11 Wall. 423, 20 L. ed. 192; *Morgan v. Parham*, 16 Wall. 471, 21 L. ed. 303; *Johnson v. De Bary-Baya Merchants' Line*, 37 Fla. 499, 19 So. 640, 37 L. R. A. 518; *Roberts v. Charlevoix*, 60 Mich. 197; *S. v. Haight*, 30 N. J. L. 428.

⁴⁹ *Nelson, J.*, in *Hays v. Pacific Mail S. S. Co.*, *supra*.

there is no registration at the domicile of the owner.⁵⁰ "The property in question must be liable to taxation in some jurisdiction. If it were permanently located in another State it would be liable to taxation there. But the facts show that it is not permanently located out of the State. From the nature of the business, it is in one place today and another tomorrow, and hence not taxable, in the jurisdiction where temporarily employed. It follows that, if not taxable here, it escapes altogether. The rule as to vessels engaged in foreign or interstate commerce is that their *situs* for the purpose of taxation is their home port of registry or residence of their owner if unregistered.⁵¹ These vessels, if they may be so-called, are not registered. Hence their *situs* for taxation is the domicile of the owners. This rule must prevail, in the absence of anything to show that they are so permanently located in another State as to be liable to taxation under the laws of that State."⁵²

On the other hand, if the vessels, though registered abroad, are permanently located within the harbors of a State, they may be taxed there.⁵³

§ 491. What property is situated within the State: rolling-stock of railways.

A similar problem is presented by the rolling-stock of railroads. If the rolling-stock is habitually used in a single State, it may of course be taxed in that State; but it will be almost impossible to assign it for purpose of local taxation to any particular place. It has been provided by statute in a few States that all the rolling-stock within the State shall be taxed at the principal office;⁵⁴ and the same view has been taken at common law, without statutory provision.⁵⁵ Where

⁵⁰ *Com. v. American Dredging Co.*, 122 Pa. 386, 15 Atl. 443, 9 A. S. R. 116, 1 L. R. A. 237.

⁵¹ *Citing Pullman's P. C. Co. v. Twombly*, 29 Fed. 660; *Hays v. S. S. Co.*, 17 How. 596, 15 L. ed. 254.

⁵² *Paxson, J.*, in *Com. v. American Dredging Co.*, *supra*.

⁵³ *Northwestern Lumber Co. v. Chehalis County*, 24 Wash. 626, 64 Pac. 909.

⁵⁴ *Tex. Const. Art. 8, § 5*; *Wash. Const. Art. 12, § 17*; *Ore. Misc. L. § 2744*.

⁵⁵ *Dubuque v. Ill. Cent. R. R.*, 39 Ia. 56.

the rolling-stock is used in more than one State, it is impossible for any State except that of the domicile of the owner to tax it as a whole; but where a number of cars owned by the same owner are constantly coming into and going out of a State, the State may by statute lay a tax on the owner proportionate to the average number of cars in the State.⁵⁶

§ 492. What property is situated within the State: property temporarily in the State.

In the case of property sent into a State to be disposed of there, or obtained there to be exported, there is no objection at common law to imposing a tax.⁵⁷ But it is not uncommon for a State by statute to relinquish the right of taxation, as it justly might, in such cases. "Money collected by any agent for any person, company or corporation which is to be transmitted immediately to such person, company or corporation, shall not be listed by such agent."⁵⁸ "A bond, mortgage, note, contract, account or other demand, belonging to any person not a resident of this State, sent to or deposited in this State for collection; the products of another State, owned by a non-resident of this State and consigned to his agent in this State for sale on commission for the benefit of the owner; moneys of a non-resident of this State, under the control or in the possession of his agent in this State, when transmitted to such agent for the purpose of investment or otherwise," are excepted.⁵⁹

Under the New York statute, goods sent in merely for sale are not taxable whether they are in the hands of a mere agent for sale⁶⁰ or of the corporation itself, through its agent.⁶¹

⁵⁶ Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 35 L. ed. 613; see *infra*, § 699.

⁵⁷ Diamond Match Co. v. Ontonagon, 188 U. S. 82, 47 L. ed. 394; Standard Oil Co. v. Combs, 96 Ind. 179, 49 A. R. 156; Carrier v. Gordon, 21 Oh. St. 605. See also Blackstone v. Miller, 188 U. S. 189, 47 L. ed. 439.

⁵⁸ Kan. Gen. Stat. ch. 158, § 13.

⁵⁹ N. Y. Tax Act, § 13; P. v. Comrs., 59 N. Y. 40.

⁶⁰ P. v. Comrs., 23 N. Y. 242.

⁶¹ P. v. Barker, 5 App. Div. 246, 39 N. Y. Supp. 151, aff. 149 N. Y. 623.

If, however, the corporation intends to establish a business within the State the statute does not apply.⁶²

Conversely, if property is sent out of the State for a merely temporary purpose, to be returned when that purpose is accomplished, it has been held taxable in the State from which it is sent.⁶³

Leventritt, J., said: "Tangible personal property, however, which has or has had its *situs* within this State, and is, or has been, sent from the State temporarily, is in my opinion within the spirit or intent of the act. The *situs* of such property remains here. The property of the relator outside of the State consists of cotton and silk goods in Massachusetts, whence, after being dyed and polished, they are required to be sent into this State to be manufactured into the articles dealt in by the relator. If the cotton and silk goods had been in this State so that dominion over them had been acquired, that property should not escape taxation merely because it is sent from the jurisdiction for a brief space, mayhap just prior to assessment day, to be brought back again as soon as prepared for the purposes of domestic manufacture. Even as our theory of taxation does not permit assessments against the personal property of foreign corporations not permanently invested here,⁶⁴ so conversely, personal property of a domestic corporation temporarily out of the State, acquires no new *situs*, but retains that of its owner."

If the chattel remains within the State for a sufficient time to become part of the whole body of property there, incorporated with the chattels of the State, it may be taxed though

⁶² P. v. Barker, 157 N. Y. 159, 51 N. E. 1043. Martin, J., said: "The distinction between this case and the cases to which we have referred lies in the fact that it was the purpose and intent of the relator to establish a permanent and continuous business in the state of New York, which included both the manufacture and the sale of goods manufactured, and in the fact that it designated its principal place for the transaction of such business as 45 Murray street, in the city of New York."

⁶³ P. v. Feitner, 32 N. Y. Misc. 84.

⁶⁴ Citing People v. Comrs., 23 N. Y. 242; People v. Barker, 5 App. Div. 246, 39 N. Y. Supp. 151; People v. Barker, 157 N. Y. 159, 51 N. E. 1043.

it is to be sent out of the State later. So it has been held that a contractor's outfit, consisting of mules, scrapers, etc., to be used for several months in constructing a railroad bed was sufficiently fixed within the State to be taxed.⁶⁵

§ 493. What property is situated within the State: credits in the hands of agents.

Where a foreigner has an agent within the State, by whom investments are made, who collects the income and transmits it to his principal, it is usually held that the "credits" have a *situs* in the hands of the agent within the State and may be taxed there.⁶⁶ And so where money was permanently kept by a New York corporation in an English bank as a fund to defray expenses incurred in England and France, it was held not to be taxable in New York.⁶⁷

If, however, the credit is left in the hands of an agent in the State not for investment, but merely to be collected and the proceeds transmitted to the owner abroad, the better view is that it is not property within the State.⁶⁸ In such a case Chief Justice Magruder said: "Where the owner of such credits or securities is a non-resident of Illinois, and is absent from that state, his securities, remaining in this state in the hands of an agent, are only subject to taxation in this state when they are so left in the hands of the agent for the purpose of

⁶⁵ *Griggs v. Constr. Co. v. Freeman*, 108 La. 435, 32 So. 399.

⁶⁶ *New Orleans v. Stempel*, 175 U. S. 309, 44 L. ed. 174; *Walker v. Jack*, 88 Fed. 576; *Matzenbaugh v. People*, 194 Ill. 108, 62 N. E. 546, 88 A. S. R. 134; *Foresman v. Byrns*, 68 Ind. 247 (*semble*); *In re Jefferson*, 35 Minn. 215; *Finch v. York Co.*, 19 Neb. 50, 26 N. W. 589, 56 A. R. 741; *People v. Smith*, 88 N. Y. 576; *Catlin v. Hull*, 21 Vt. 152.

In *Myers v. Seaberger*, 45 Oh. St. 232, 12 N. E. 796, a distinction was made between a mere agent for collection and an agent for investment; credits not being taxable in the hands of the former.

In several cases, especially older ones, it is simply held that the credits are with the creditor and cannot be elsewhere. *Hunter v. Board of Supervisors*, 33 Ia. 376, 11 A. R. 132.

⁶⁷ *P. v. Feitner*, 32 N. Y. Misc. 84.

⁶⁸ *Reat v. People*, 201 Ill. 469, 66 N. E. 242; *Myers v. Seaberger*, 45 Oh. S. 232.

having them renewed or collected, in order that the money realized from such renewal or collection may be reloaned by the agent as a permanent business. The credits of the non-resident owner, so remaining in Illinois, must constitute the subject-matter or stock in trade of the business of the owner as conducted by the agent."⁶⁹

§ 494. What property is situated within the State: mortgage debts.

Where a credit is secured by mortgage, can it be taxed where the security is? It has been held in England that where a debt due to a foreigner is secured by real estate or other property within the State, it may be taxed to the extent of the value of the security thereby given; which may amount at most to the value of the security (provided that is no greater than the debt), but if there is other security outside the State that must be taken into account in estimating the value of the security.⁷⁰ But though there may be a technical difference between the property held as security and the security thereby given, it is practically double taxation to tax both the property and the security. Indeed, it has been held in California double taxation, and for that reason unconstitutional, to tax both the property secured and the debt; and a tax on the bonds of a domestic corporation, secured by a mortgage of property of the corporation on which it paid a tax, was held void.⁷¹ And it has generally been held in this country that a credit belonging to a foreigner can in no way be taxed, though secured by mortgage of real estate within the jurisdiction.⁷² It is clear that such credits may be taxed in the State in which the creditor resides.⁷³

⁶⁹ *Reat v. People*, *supra*.

⁷⁰ *Walsh v. Queen*, [1894] A. C. 144.

⁷¹ *Germania Trust Co. v. San Francisco*, 128 Cal. 589, 61 Pac. 178; *In re Fair's Estate*, 128 Cal. 607, 61 Pac. 184.

⁷² *People v. Eastman*, 25 Cal. 601; *Comrs. v. Cutter*, 3 Colo. 349; *State v. Earl*, 1 Nev. 394; *Darcy v. Darcy*, 51 N. J. L. 140, 16 Atl. 160.

⁷³ *State v. Gaylord*, 73 Wis. 316, 41 N. W. 521.

CHAPTER XXI.

TAXATION OF INTANGIBLE PROPERTY.

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| <p>§ 501. Situs of intangible property.
502. Intangible property with a real <i>situs</i>.
503. Corporate capital.
504. The "corporate excess."
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§ 501. Situs of intangible property.

Mere intangible property, not represented by a tangible security of value, is not in fact situated anywhere, or subject to any jurisdiction by reason of its *situs*. It is, to be sure, often said that a chose in action has a *situs* with the debtor, or with the creditor; and courts are in hopeless confusion on the question whether the obligation should properly be held to be situated with the one or the other. But to assign place to an intangible and incorporeal thing is at most a mere fiction, upon which jurisdiction for taxation should not be founded. Such intangible property can be reached only through the owner and at his domicile, since it forms part of his property, and he may be taxed according to the amount of his property.

But there is a growing tendency to assign certain kinds of intangible property to some *situs*, and permit their taxation there. In *Adams Express Co. v. Ohio State Auditor*,¹ Brewer, J., used this most suggestive and pregnant language:

"In conclusion, let us say that this is eminently a practical age; that courts must recognize things as they are, and as possessing a value which is accorded to them in the markets

¹ 166 U. S. 185, 41 L. ed. 965.

of the world; and that no finespun theories about *situs* should interfere to enable these large corporations, whose business is, of necessity, carried on through many states, from bearing in each state such burden of taxation as a fair distribution of the actual value of their property among those states requires."

§ 502. Intangible property with a real situs.

Certain exceptional kinds of intangible property may without too great use of fictions be assigned a real *situs*. Certain examples of this kind, established by authority, have already been considered; but these are assigned a *situs* by treating them as *quasi*-tangible. Property still recognized as intangible may, however, have such connection with some place as to give jurisdiction over it to the sovereign of that place. A type of such property is a judgment, which cannot be dissociated from the court that rendered it, and is entirely within the jurisdiction of such court.

Upon this principle it is held that the good-will of a business has a *situs* where the business is carried on, and only there; there can therefore strictly be no division between States of this portion of the intangible property of a corporation, but the entire value of the good will which results from exercising the corporate franchise and carrying on business within the State, is taxable there.² So too it would seem that the franchise of a foreign corporation to do business within a State may be taxed there as property there situate.³ And so when this intangible property is a franchise for a ferry granted by another State, which is regarded as an incorporeal hereditament, it cannot be included in any scheme of taxation, for it is without the State, and is situate locally (like other real estate) in the State which granted it.⁴

² *People v. Roberts*, 159 N. Y. 70, 53 N. E. 685, 45 L. R. A. 126; *People v. Roberts*, 55 N. Y. Supp. 317, 37 App. Div. 1. But see *contra*, *Hart v. Smith*, 159 Ind. 182, 64 N. E. 661, 95 A. S. R. 280 (*semble*).

³ *London, etc., Bank v. Block*, 117 Fed. 900; *Oakland Sugar Mill Co. v. Fred W. Wolf Co.*, 118 Fed. 239.

⁴ *Louisville & J. Ferry Co. v. Kentucky*, 188 U. S. 385, 47 L. ed. 513.

§ 503. Corporate capital.

The most important form of intangible property of a corporation is the "corporate excess:" the amount by which the aggregate value of the shares of capital stock exceeds the tangible property of the corporation. This excess represents the good-will of the business, the franchise of the corporation to act as such, and its franchise to carry on its business; broadly speaking, the value of the business as a going concern. In most States an effort is made to reach and tax this corporate excess. The simplest but least satisfactory method is to tax all the assets of the company, tangible and intangible, as a unit,⁵ or to place a valuation on the franchise as a separate item of property.⁶ Another method is to tax the capital stock as a whole; either by determining the aggregate value of the shares and taxing them,⁷ or by taxing the difference between such aggregate value and the value of the tangible property as "capital stock," in addition to taxing the tangible property.⁸ These methods will be examined in detail in connection with the laws of the particular States.

§ 504. The "corporate excess."

The business capital of a corporation which is not invested in tangible property may be taxed at its place of business. Thus the Supreme Court of the United States has held that the

⁵ Ark. Stat. § 6462; 32 U. S. Stat. 619 (Dist. Colo.); Fla. Rev. Stat. App. ch. 1410, § 8; *Porter v. Rockford*, R. I. & S. L. R. R., 76 Ill. 561; Ky. 1902, ch. 128, Art. 1, § 2 (for State tax); La. 1890, Act 106; Mich. 1893, Act 6, § 19; N. Car. 1903, Machin. Act, § 34; *Washburn v. Washburn W. W. Co.*, (Wis.) 98 N. W. 539; Wyo. Rev. Stat. § 1775.

⁶ Tenn. 1901, ch. 174, § 22; Tex. Rev. Stat. Art. 5067; Wash. 1897, ch. 71, § 8.

⁷ Ia. Code, § 1323; Mass. 1903, ch. 437, § 74; N. Y. Tax L. § 12; Pa. P. L. 1893, p. 353.

⁸ Ala. 1901, Act 1151, § 6; *Spring Valley W. W. v. Schottler*, 62 Cal. 69; Ida. Polit. Code, § 1312; Ill. Rev. Stat. ch. 120, § 3; Ind. Rev. Stat. §§ 8422, 8435, 8492; Kan. Gen. Stat. ch. 158, § 28; Minn. Code, § 3758; Mo. Code, § 9153; Neb. 1903, ch. 73, § 29; Nev. 1891 (Mar. 23), § 6; N. Dak. 1897, ch. 126, § 25; S. Dak. 1901, ch. 55, § 8.

intangible property of a foreign corporation, created by the acquisition of franchises and privileges within the State, may be taxed.⁹ Mr. Justice Brewer said:

“It matters not in what this intangible property consists,—whether privileges, corporate franchises, contracts, or obligations. It is enough that it is property which, though intangible, exists, which has value, produces income, and passes current in the markets of the world. To ignore this intangible property, or to hold that it is not subject to taxation at its accepted value, is to eliminate from the reach of the taxing power a large portion of the wealth of the country. . . .

“Suppose an express company is incorporated to transact business within the limits of a state, and does business only within such limits, and, for the purpose of transacting that business, purchases and holds a few thousands of dollars’ worth of horses and wagons, and yet it so meets the wants of the people dwelling in that state, so uses the tangible property which it possesses, so transacts business therein, that its stock becomes in the markets of the state of the actual cash value of hundreds of thousands of dollars. To the owners thereof, for the purposes of income and sale, the corporate property is worth hundreds of thousands of dollars. Does substance of right require that it shall pay taxes only upon the thousands of dollars of tangible property which it possesses? Accumulated wealth will laugh at the crudity of taxing laws which reach only the one, and ignore the other; while they who own tangible property, not organized into a single producing plant, will feel the injustice of a system which so misplaces the burden of taxation. . . .

“Where is the *situs* of this intangible property? Is it simply where its home office is, where is found the central directing thought which controls the workings of the great machine, or in the state which gave it its corporate franchise; or is that intangible property distributed wherever its tangible property is located and its work is done? Clearly, as we think,

⁹ *Adams Express Co. v. Ohio State Auditor*, 166 U. S. 185, 41 L. ed. 965.

the latter. . . . The Southern Pacific Railway Company is a corporation chartered by the state of Kentucky; yet, within the limits of that state, it is said to have no tangible property, and no office for the transaction of business. The vast amount of tangible property which, by lease or otherwise, it holds and operates, and all the franchises to do which it exercises, exist and are exercised in the states and territories on the Pacific slope. Do not these intangible properties,—these franchises to do,—exercised in connection with the tangible property which it holds, create a substantive matter of taxation, to be asserted by every state in which that tangible property is found?"

It has been thought worth while to quote at length from this opinion, because in it is expressed, more forcibly perhaps than anywhere else, a distinct tendency of the law; a tendency which is likely to lead to novel methods of taxing "values," to use a mercantile term, rather than property in the legal sense. To the extent of taxing the value of a business at the place where it is carried on, the law is already settled.

It is to be noticed that such a tax may include a tax upon tangible property. In that case if the tangible property has already been taxed as such in the same state, the tax on the business might to that extent be invalid as double taxation.¹⁰ What provisions have been adopted to prevent such double taxation will be discussed in connection with the laws of the States.

§ 505. Division of intangible property between States.

Where this intangible property results from the entire business carried on in several States, it is obvious that one of these States cannot claim the whole of the property as taxable. The proper proceeding in that case is to tax that portion of the whole amount which the amount of business done within the State bears to the total amount of business.¹¹ And this

¹⁰ S. W. Tel. & Tel. Co. v. Merschuel, (Tex. Civ. App.) 65 S. W. 381.

¹¹ W. U. Tel. C. v. Mass., 125 U. S. 530, 31 L. ed. 790; *Massachusetts v.* [658]

is usually done in the case of business carried on upon a tangible route, like that of a railroad or telegraph company, by dividing the whole value of the business among the States in proportion to the mileage; a method already approved for the division of rolling-stock among States for taxation. This method of division has been extended to the cases of palace cars and express companies, though they own no track of their own.¹²

§ 506. Taxation of corporate property as a unit.

A method commonly taken to impose taxation on the corporate excess locally is to regard the whole property of the corporation as a unit employed in business, a proportionate part of which exists wherever the business of the corporation is carried on. This theory and its justifiable limits were lately discussed most luminously by Mr. Justice Holmes, in an opinion which probably settles a vexed and difficult controversy.¹³ A State, he says, "can tax property permanently within its jurisdiction although belonging to persons domiciled elsewhere and used in commerce among the states. And when that property is part of a system and has its actual uses only in connection with other parts of the system, that fact may be considered by the state in taxing, even though the other parts of the system are outside of the state. The sleepers and rails of a railroad, or the posts and wires of a telegraph company, are worth more than the prepared wood and the bars of steel

W. U. Tel. Co., 141 U. S. 40, 35 L. ed. 628; *Adams Exp. Co. v. Ohio State Auditor*, 166 U. S. 185, 41 L. ed. 965; *New York v. Roberts*, 171 U. S. 658, 43 L. ed. 323; *W. U. Tel. Co. v. Missouri*, 190 U. S. 412, 47 L. ed. 1116; *People v. Roberts*, 152 N. Y. 59, 46 N. E. 161, 36 L. R. A. 756; *Commissioners v. Old Dominion S. S. Co.*, 128 N. C. 558, 39 S. E. 558; *Com. v. Standard Oil Co.*, 101 Pa. 119. See *contra, Re Queenstown Heights Bridge*, 1 Ont. Law. Rep. 114.

¹² *American Express Co. v. Indiana*, 165 U. S. 255, 41 L. ed. 707; *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194, 41 L. ed. 683, 166 U. S. 185, 41 L. ed. 965; *Adams Express Co. v. Kentucky*, 166 U. S. 185, 41 L. ed. 965.

¹³ *Fargo v. Hart*, 193 U. S. 490.

or coils of wire, from their organic connection with other rails or wires and the rest of the apparatus of a working whole. This being clear, it is held reasonable and constitutional to get at the worth of such a line, in the absence of anything more special, by a mileage proportion. The tax is a tax on property, not on the privilege of doing the business, but it is intended to reach the intangible value due to what we have called the organic relation of the property to the whole system.¹⁴ And this principle, established by many cases, has been extended by the cases first cited above to the lines of express companies, although those lines are not material lines upon the face of the earth. There is the same organic connection as in the other cases."

But a limitation which has not previously been stated must be placed upon this doctrine; for it cannot be so applied as to tax property not really in the State.

"It is obvious, however, that this notion of organic unity may be made a means of unlawfully taxing the privilege or property outside the state, under the name of enhanced value or good will, if it is not closely confined to its true meaning. So long as it fairly may be assumed that the different parts of a line are about equal in value, a division by mileage is justifiable. But it is recognized in the cases that if, for instance, a railroad company had terminals in one state equal in value to all the rest of the line through another, the latter state could not make use of the unity of the road to equalize the value of every mile. That would be taxing property outside of the State under a pretense.¹⁵ The same principle applies to personal property which the State would not have the right to tax directly."¹⁶

In the case in question the State had included in the busi-

¹⁴ Citing *Western U. T. Co. v. Taggart*, 163 U. S. 1, 21, 41 L. ed. 49, 57.

¹⁵ Citing *Pittsburgh, C. C. & S. L. R. R. v. Backus*, 154 U. S. 421, 431, 38 L. ed. 1031, 1038; *Western U. T. Co. v. Taggart*, *supra*.

¹⁶ Citing *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194, 227, 165 U. S. 185, 222, 223, 41 L. ed. 683, 697, 965, 978.

ness value of the corporate assets, of which a proportional part was taxed, certain stocks and bonds held by the foreign corporation in its State of charter as invested surplus. It was argued that by swelling the assets of the company the property added to its credit, and thus directly affected the value of the whole business. The court, however, held this point unsound, and declared the tax invalid.

"It will be seen that we are dealing with much more attenuated relations than when there is a physical line of rails or wires to be valued, every mile of which is a necessary condition of the use of the rest of the lines beyond, and therefore a reflex condition of the value of the line behind it. The case is stronger even than one of terminals having a large value as real estate independent of their use to the road. The express business added nothing to the value of the bonds in New York. Conversely, the utmost extent to which those bonds entered into the value of property in Indiana was in so far as they helped to make the public believe that the express company could be trusted, and therefore increased its good will. That they made a part of the public more willing to buy interests in the company because they were an assurance against personal liability was no concern of Indiana. But it is obvious that, merely from the point of view that the express company could be trusted by the public with the carriage of goods or money, the good will could not be measured by the assets. . . .

"Certainly it is absurd to say that the business of such companies will bear an exact or any proportion to the stocks and bonds which they may own. Unless we are much mistaken, most people who want to send things by express employ a company simply because it is there, and they see its sign is out. The only effect that knowledge of the capital of the company could have would be to produce the conviction that the company was safe to employ. Assume that something is to be added to the good will of a company because it is safe, and that the good will, or a part of it, of the express business in Indiana may be considered in assessing its property there,

this is very different from measuring the good will by the capital when the facts appear as they do in this case. The difference is not a mere difference in valuation, it is a difference in principle, and in our opinion the principle adopted by the board was wrong. It involved an attempt to tax property beyond the jurisdiction of the state, and to throw an unconstitutional burden on commerce among the states."

To the same effect was the decision of the Circuit Court of Appeals, construing the Kentucky statute.¹⁷ Lurton, Circuit Judge, said:¹⁸

"The bonds and stocks thus conveyed to a trust company constituted an investment of surplus earnings which were not used in carrying on the express business of the company, and, as an outside investment, had a special *situs* in New York, where they were actually held. Not being a part of the distributable unit of taxation, and the bonds issued against them not being general obligations of the company, neither the bonds nor the securities upon which they were issued should be estimated in the valuation of the company's intangible property."

§ 507. The rule now established.

The present state of the law, then, appears to be this: Wherever a business enterprise exists, in which property situated in several States is used, and the business is carried on in several States, the whole value of the business includes or may include more than the aggregate of the separate articles of property used in it; and this excess may properly be referred not to any one State, but to all the States in which the business is done. But that part of the value which may be divided among the States is that part only which is equally applicable to all. Fixed tangible property, being referable only to the State in which it is situated, should be deducted from the whole value of the business before dividing the excess; though

¹⁷ Coulter v. Weir, 127 Fed. 897.

¹⁸ At p. 911.

tangible property which is used throughout the business may be divided with the excess. In the same way if good will is greater in one State than in another, it should be subtracted and separately taxed. The balance, the corporate excess, may properly be divided among the States in proportion to the amount of business done or capital invested in each.

§ 508. Franchise tax.

The taxation of the corporate franchise by the State which granted it can be restrained only by some provision of the State constitution. This franchise, so taxed, is "the right or privilege given by the State to two or more persons of being a corporation, that is, of doing business in a corporate capacity, and not the privilege or franchise which, when incorporated, the company may exercise. The right or privilege to be a corporation, or to do business as such a body, is one generally deemed of value to the corporators, or it would not be sought in such numbers as at present. It is a right or privilege by which several individuals may unite themselves under a common name, and act as a single person, with a succession of members, without dissolution or suspension of business, and with a limited individual liability. The granting of such right or privilege rests entirely in the discretion of the state, and, of course, when granted, may be accompanied with such conditions as its legislature may judge most befitting to its interests and policy. It may require, as a condition of the grant of the franchise, and also of its continued exercise, that the corporation pay a specific sum to the state each year or month, or a specific portion of its gross receipts, or of the profits of its business, or a sum to be ascertained in any convenient mode which it may prescribe. The validity of the tax can in no way be dependent upon the mode which the state may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges

it bestows. It may well seek in this way to increase its revenue to the extent to which it has been cut off by exemption of other property from taxation. As its revenues to meet its expenses are lessened in one direction, it may look to any other property as sources of revenue which is not exempted from taxation. Its action in this matter is not the subject of judicial inquiry in a federal tribunal. As was said in Delaware Railroad Tax Case:¹⁹ 'The state may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation, or its separate corporate property; and the manner in which its value shall be assessed, and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than the one prescribed by the legislature of the state. Our only concern is with the validity of the tax. All else lies beyond the domain of our jurisdiction.' It is true, as said by this court in *California v. Railroad Co.*²⁰ that the taxation of a corporate franchise has no limitation but the discretion of the taxing power; and its value is not measured like that of property, but may be fixed at any sum that the legislature may choose. It may be arbitrarily laid, without any valuation put upon the franchise. If any hardship or oppression is created by the amount exacted, the remedy must be sought by appeal to the legislature of the state. It cannot be furnished by the federal tribunals. The tax in the present case would not be affected if the nature of the property in which the whole capital stock is invested were changed, and put into real property or bonds of New York, or of the other states. From the very nature of the tax, being laid upon a franchise given by the state, and revocable at pleasure, it cannot be affected in any way by the character of the property in which its capital stock is invested. The power of the state over its corporate

¹⁹ 18 Wall. 206, 231, 21 L. ed. 888.

²⁰ 127 U. S. 1, 41, 32 L. ed. 150.

franchise, and the conditions upon which it shall be exercised, is as ample and plenary in the one case as in the other.”²¹

This tax, when imposed upon a foreign corporation, is a privilege tax, such as will be considered in the next section; when imposed upon a domestic corporation, it is in the nature of a poll tax, and in imposing a poll tax the State which has jurisdiction of the person cannot be controlled. As the Supreme Court of the United States said:

“Whether the State of Connecticut shall measure the contribution which persons resident within its jurisdiction shall make by way of taxes, in return for the protection it affords them, by the value of the credits, choses in action, bonds or stocks which they may own (other than such as are exempted or protected from taxation under the Constitution and laws of the United States) is a matter which concerns only the people of that State, and with which the Federal Government cannot rightly interfere.”²²

This tax is not a property tax, even when it is measured by the amount of property of a corporation. Therefore, to levy such a tax in addition to a property tax is not double taxation;²³ and the tax is not subject to a constitutional requirement that taxes shall be uniform.²⁴ For the same reason, in estimating the value of the property of the corporation in order to arrive at the proper basis for taxation it is not necessary to deduct non-taxable property, such as government bonds,²⁵ or patent rights,²⁶ or other non-taxable property.²⁷

²¹ Field, J., in *Home Ins. Co. v. New York*, 134 U. S. 594, 33 L. ed. 1025. See *Southern Gum Co. v. Laylin*, 66 Oh. St. 578, 64 N. E. 564.

²² Harlan, J., in *Kirtland v. Hotchkiss*, 100 U. S. 491, 499, 25 L. ed. 558.

²³ *Western Assur. Co. v. Halliday*, 127 Fed. 830; *Southern Gum Co. v. Laylin*, 66 Oh. St. 578, 64 N. E. 564.

²⁴ *Phoenix Carpet Co. v. State*, 118 Ala. 143, 22 So. 627; *Com. v. Hamilton Mfg. Co.*, 12 All. (Mass.) 298; *Standard Underground Cable Co. v. Atty. Gen.*, 46 N. J. Eq. 270, 19 Atl. 733, 19 A. S. R. 394.

²⁵ *Home Ins. Co. v. New York*, 134 U. S. 594, 33 L. ed. 1025, affirming

²⁶ *Marsden Co. v. Assessors*, 61 N. J. L. 461, 39 Atl. 638. *Contra*, *People v. Roberts*, 159 N. Y. 70, 53 N. E. 685, 45 L. R. A. 126.

²⁷ *Honduras Commercial Co. v. Assessors*, 54 N. J. L. 278, 23 Atl. 668.

§ 509. Privilege tax.

A State may as has been seen tax any privilege it grants. Such a tax, or rather license fee, is the payment exacted of a foreign corporation for the privilege of doing business within the State. Since a foreign corporation may be allowed to do business in a State upon conditions, the payment of a sum of money may be made a condition; and this may in form be the payment of a tax greater than or different from that paid by a domestic corporation. Such a tax is valid.²⁸ It is not properly an exercise of the power to tax property, but is a license fee paid for the privilege of entering the State, and its validity is a necessary deduction from the right absolutely to exclude the foreign corporation. Upon a similar principle the exaction of a fee for filing a certificate of incorporation is not a tax;²⁹ nor is a fee for filing an annual report.³⁰

In most State constitutions or statutes there is a provision that all taxes shall be uniform or equal. This does not prevent a discrimination against foreign corporations by way of exact-

People v. Home Ins. Co., 92 N. Y. 328; *Com. v. Hamilton Mfg. Co.*, 12 All. (Mass.) 298.

²⁸ *Ducat v. Chicago*, 10 Wall. 410, 19 L. ed. 972; *Liverpool Ins. Co. v. Mass.*, 10 Wall. 566, 19 L. ed. 1029; *Pembina Mining Co. v. Pa.*, 125 U. S. 181, 31 L. ed. 650; *Maine v. Grand Trunk Ry.*, 142 U. S. 217, 35 L. ed. 994; *Horn Silver Mining Co. v. New York*, 143 U. S. 305, 36 L. ed. 164; *New York v. Roberts*, 171 U. S. 658, 43 L. ed. 323; *Manchester Fire Ins. Co. v. Herriott*, 91 Fed. 711; *Goldsmith v. Home Ins. Co.*, 62 Ga. 379; *Ducat v. Chicago*, 48 Ill. 172, 95 A. D. 529; *W. U. Tel. Co. v. Lieb*, 76 Ill. 172; *Com. v. Milton*, 12 B. Mon. (Ky.) 212, 54 A. D. 522; *Phoenix Ins. Co. v. Com.*, 5 Bush (Ky.), 68, 96 A. D. 331; *State v. Ins. Co. of North Amer.*, 115 Ind. 257; *Blackmer v. Royal Ins. Co.*, 115 Ind. 291; *State v. Lathrop*, 10 La. Ann. 398; *State v. Fosdick*, 21 La. Ann. 434; *State v. Hammond Packing Co.*, 110 La. 180, 34 So. 368; *Atty.-Genl. v. Bay State Mining Co.*, 99 Mass. 148, 96 A. D. 717; *Ex parte Cohn*, 13 Nev. 424; *Tatem v. Wright*, 23 N. J. L. 429; *People v. Fire Assoc. of Phila.*, 92 N. Y. 311, 44 A. R. 380; *Fire Dept. v. Noble*, 3 E. D. Smith (N. Y.), 440; *W. U. Tel. Co. v. Mayer*, 28 Oh. St. 521; *Southern Gum Co. v. Laylin*, 66 Oh. St. 578, 64 N. E. 564; *Slaughter v. Com.*, 13 Gratt. (Va.) 767; *Fire Dept. of Milwaukee v. Helfelstein*, 16 Wis. 136.

²⁹ *Ashley v. Ryan*, 153 U. S. 436, 38 L. ed. 773.

³⁰ *Southern Gum Co. v. Laylin*, 66 Oh. St. 578, 64 N. E. 564.

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ing a license fee for the privilege of doing business in the State; but the same license fee must be exacted from all corporations of the same class.³¹ And such a license fee does not come within the provision of the constitution that taxation must be for revenue only,³² or that it must be uniform.³³ Of the nature of the imposition of a license fee is the provision that an agent of a foreign corporation shall be responsible for the tax assessed upon it.³⁴

³¹ *Manchester Fire Ins. Co. v. Herriott*, 91 Fed. 711; *American Refrig. Trans. Co. v. Adams*, 28 Colo. 119, 63 Pac. 410; *People v. Thurber*, 13 Ill. 554; *Walker v. Springfield*, 94 Ill. 364; *Home Ins. Co. v. Swigert*, 104 Ill. 653; *State v. Ins. Co. of North America*, 115 Ind. 257; *Phoenix Ins. Co. v. Welch*, 29 Kan. 672; *State v. Hammond Packing Co.*, 110 La. 180, 34 So. 368; *Ex parte Cohn*, 13 Nev. 424; *W. U. Tel. Co. v. Mayer*, 28 Oh. St. 521; *Germania Life Ins. Co. v. Com.*, 85 Pa. 513; *Slaughter v. Com.*, 13 Gratt. (Va.) 767; *Blue Jacket Consol. Copper Co. v. Scherr*, 50 W. Va. 533, 40 S. E. 514; *Fire Department of Milwaukee v. Helfelstein*, 16 Wis. 136.

³² *Goldsmith v. Home Ins. Co.*, 62 Ga. 379.

³³ *Parker v. North B. & M. Ins. Co.*, 42 La. Ann. 428, 7 So. 599.

³⁴ *State v. Sloss*, 83 Ala. 93.

CHAPTER XXII.

TAXATION LAWS OF THE STATES; GENERAL BUSINESS CORPORATIONS.

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§ 511. Alabama.

Alabama imposes a franchise tax upon all corporations,
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both foreign doing business in the State and domestic. A tax, both State and local, is paid upon the property of the corporation within the State, the local tax being levied in the same manner as the tax upon individuals. The corporate excess is taxed by deducting from the market value of the shares the proper proportion of the property of the corporation taxed to it directly, assessing the stockholders for the balance, and obliging the corporation to pay the tax, giving it a lien on the shares for repayment.

The Constitution of the State provides that "all taxes levied on property in this State shall be assessed in exact proportion to the value of such property,"¹ and "the property of private corporations, associations, and individuals of this State shall forever be taxed at the same rate; *provided*, this section shall not apply to institutions or corporations devoted exclusively to religious, educational, or charitable purposes."²

Property of domestic corporations situated in another State is not taxable.³

Under these provisions of the constitution, the property of corporations, both domestic and resident foreign corporations, is taxed in the following manner:

All corporations, both foreign and domestic, doing business in the State, not otherwise specifically required to pay a license tax, pay annually a privilege tax according to the amount of the paid-up capital stock. The amount paid is, if the capital stock is under ten thousand dollars, ten dollars; ten to twenty-five thousand, fifteen dollars; twenty-five to fifty thousand, twenty-five dollars; fifty to one hundred thousand, fifty dollars; one hundred to two hundred thousand, seventy-five dollars; two hundred to three hundred thousand, one hundred twenty-five dollars; three hundred to four hundred thousand, one hundred seventy dollars; four hundred to five hundred thousand, two hundred dollars; five hundred thousand to

¹ Ala. Const. Art. 11, § 1.

² *Ibid.* Art. 11, § 6.

³ *Varner v. Calhoun*, 48 Ala. 178.

one million, three hundred dollars; over one million, five hundred dollars.⁴

This tax has been attacked as forbidden by the constitutional provisions quoted: but the constitutionality of the tax was sustained by the court. "The tax imposed by the subdivision has the properties and quality of a franchise tax. It is measured or graduated by the amount of the paid-up capital stock of the corporation, and this distinguishes it from a tax on property. Speaking in reference to this inquiry, it was said by Clopton, J., in *State v. Stonewall Ins. Co.*:⁵ 'The usual and most certain test is whether the tax is upon the capital stock, *eo nomine*, without regard to its value, or at its assessed valuation in whatever it may be invested. If the former, it is a franchise tax; if the latter, a tax upon the property.' Reference was made to *Bank of Commerce v. New York*,⁶ in which it was said by Nelson, J., speaking of a franchise tax: 'The tax was like one annexed to the franchise as a royalty for the grant.' The tax may be imposed on the creation of the corporation, but, if the charter or grant of incorporation does not expressly exempt it from taxation, a tax on the franchise may be subsequently imposed at the will of the legislature. . . .

"We may concede that when a tax is imposed on avocations or privileges, or on the franchises of corporations, it must be equal and uniform. The equality and uniformity consist in the imposition of a like tax upon all who engage in the avocation, or who may exercise the privilege, taxed, and, if it be a franchise tax, upon all corporations belonging to the class upon which it is imposed."⁷

Upon the real and personal property of the corporation the State levies a tax of fifty-five cents per hundred dollars, and

⁴ Ala. 1901, Act 1151, § 17.

⁵ 89 Ala. 338, 7 So. 754.

⁶ 2 Black, 620, 17 L. ed. 451.

⁷ Brickell, C. J., in *Phoenix Carpet Co. v. State*, 118 Ala. 143, 22 So. 627.

tangible property is also assessed locally. The corporate excess is also assessed as follows:

“Every share of any corporation organized under the laws of this State or any other State, or of the United States (other than railroad, telegraph, long distance telephone, express and sleeping car companies, building and loan associations and banks or banking associations), to be assessed and collected in the county wherein such corporation has its chief or home office in this State, and to be assessed at its actual market value to the person in whose name such shares stand on the books of the corporation, and not to the corporation.”

The amount of taxable property, number and value of shares, amount of surplus and undivided profits, and name and residences of stockholders are to be returned by the corporation. “Thereupon it shall be the duty of the assessor, after passing upon such assessments, to deduct from the aggregate amount or sum at which the whole of the shares are assessed the aggregate amount or sum at which the real and personal property of the corporation is assessed for owned by such corporation, and the residue of value remaining after such deduction shall be the assessed value of the whole of such shares, and such residue divided by the whole number of shares shall constitute the value of each share for taxation, and the corporation shall pay for the shareholders the tax assessed against his shares, and the amount so paid for any shareholder shall be a lien on any interest which shareholders may have in any property owned by the corporation. It is the intent and meaning of this subdivision that all the property, real and personal, of the corporation, except such property as is exempt from taxation by the laws of the State or of the United States, shall be assessed for taxation against the corporation as other property in this State is assessed to the owner thereof, and the corporation shall pay the tax thereon, whether such assessment exceeds the aggregate assessed value of the shares or not; that the shares shall be assessed for taxation against the shareholders at their actual market value after deducting

therefrom the value of the real and personal property, owned by such corporation, and that the corporation shall pay for the shareholders respectively the tax so assessed against their shares. If the aggregate value of the shares does not exceed the aggregate value of the real and personal property of the corporation, as assessed for taxation, then no tax shall be demanded or collected on the shares. It shall be no ground of objection to such assessment of shares that the same is entered on the assessment book in the name of the corporation.”⁸

§ 512. Arkansas.

There is no franchise tax. The corporation pays a property tax. The tangible property is assessed like that of individuals, and the intangible property is valued by the help of a statement filed by the corporation.

The domestic corporation is taxed on its intangible personalty everywhere.

“The term personal property . . . shall include: Second. The capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion or interest in such stock, profits, or means, by whatsoever name the same may be designated, inclusive of every share or portion, right or interest . . . in and to every ship.⁹ All property, whether real or personal, in this State; all moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise, of persons residing therein; the property of corporations now existing or hereafter created, and property of all banks and banking companies now existing or hereafter created, and of all bankers and brokers, shall be subject to taxation.”¹⁰ Gas, telephone, bridge, street railroad, savings banks, mutual loan, building, transportation, construction, and all other com-

⁸ Ala. 1901, Act 1151, § 6.

⁹ Ark. Stat. § 6401.

¹⁰ *Ibid.* § 6402.

panies, corporations or associations, incorporated under the laws of this State or under the laws of any other State and doing business in this State, other than insurance companies whose taxation is in this act specifically provided for, in addition to the other property required by this act to be listed shall deliver a sworn statement containing the amount of capital stock authorized and paid up, number of shares, market or actual value of shares, amount of indebtedness, and true valuation of all tangible property belonging to the company; this statement is the basis of valuation of the property of the company.¹¹

§ 513. Arizona.

There is no special corporation tax in Arizona, either by way of a franchise tax or a tax on the corporate excess, a corporation, whether domestic or foreign, being taxed on its property like an individual. "All property of every kind and nature whatsoever within this Territory" is subject to taxation.¹² And shares of stock in a corporation the property of which has been assessed pay no tax.¹³

§ 514. California.

The Constitution provides that "all property in the State not exempt under the laws of the United States shall be taxed in proportion to its value, to be ascertained as provided by law. The word property as used in this article and section is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal and mixed capable of private ownership."¹⁴ The statutes of the State provide that "shares of stock in corporations

¹¹ Ark. Stat. § 6462. The intangible property of a foreign corporation assessed under this provision is described in *Wells-Fargo Express Co. v. Crawford Co.*, 63 Ark. 576, 40 S. W. 710, 37 L. R. A. 371.

¹² Ariz. Rev. Stat. § 3834.

¹³ *Ibid.* § 3837.

¹⁴ Cal. Const. Art. 13, § 1.

possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also all the corporate property, would be double taxation. Therefore, all property belonging to corporations, save and except the property of national banking associations not assessable by Federal statute, shall be assessed and taxed. But no assessment shall be made of shares of stock in any corporation, save and except in national banking associations, whose property, other than real estate, is exempt from assessment by Federal statute.”¹⁵ “The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.”¹⁶

The capital of the corporation, being its property, is taxable;¹⁷ but the stock is not taxable even where the capital, being invested in government bonds, cannot be taxed.¹⁸

The franchises of the corporation are expressly included in taxable property by the constitution, and they may properly be taxed.

“There can be no doubt of the power of a State to tax the franchise at its assessed value. There may be more difficulty in arriving at its value than that of a parcel of land or personal chattels, but still its value may be estimated. . . . If a State can impose a tax on the franchise of a corporation in the nature of an excise or duty, it does not exclude the taxation by a valuation made by an assessor.”¹⁹

The proper method of arriving at the value of the franchise is by taking the aggregate of the market value of the shares of stock, and deducting therefrom the value of the real and personal property. The difference is the market value of the

¹⁵ Cal. Polit. Code, § 3608.

¹⁶ *Ibid.* § 3641.

¹⁷ *San Francisco v. Spring Valley Waterworks*, 54 Cal. 571.

¹⁸ *Peo. v. National Gold Bank*, 51 Cal. 508.

¹⁹ *Thornton, J., in Spring Valley W. W. v. Schottler*, 62 Cal. 69, 112.

franchise. This "corporate excess" it was the intention of the legislature to tax.²⁰

Not only is a domestic corporation taxable on its franchises; a foreign corporation is also taxable on such of its franchises as are within the State. Its franchise to be is of course granted by the charter State, and does not exist elsewhere; but its franchise to act may be exercised in a foreign State.

"In dealing with the franchise of the complainant as a corporation, the assessment must be held as applying only to the franchise as property in this state. The state has no power to assess or tax property located outside its borders. But the complainant has come into this state, and has brought with it the franchise of a corporation to exercise its corporate powers in this state. It has no mere silent existence in the state, but it has entered into active competition with similar institutions chartered by the state. . . . The constitution and laws of this state declare corporate franchises to be property, and under this law the franchises of domestic corporations are taxed.²¹ It is this property in a corporate franchise in the possession of and owned and controlled by the complainant in this state that is involved in this assessment."²²

In the case of a domestic corporation not only the franchise to act but also the franchise to exist is taxable.²³

Tangible property of the corporation located in another State is not taxable in California.²⁴

A license fee is exacted of corporations doing a mercantile business upon the average amount of sales as follows:²⁵

Where the amount is not over \$15,000,	.	.	\$ 12 00
Over \$15,000 but not over \$30,000,	.	.	18 00
Over \$30,000 but not over \$60,000,	.	.	36 00

²⁰ Spring Valley W. W. v. Schottler, *supra*.

²¹ Citing Spring Valley W. W. v. Schottler, *supra*.

²² Morrow, J., in London & S. F. Bank v. Block, 117 Fed. 900.

²³ Bank of California v. San Francisco, (Cal.) 75 Pac. 832.

²⁴ San Francisco v. Flood, 64 Cal. 504.

²⁵ Cal. Pol. Code, § 3382.

§ 515.] FOREIGN CORPORATIONS. [Chap. XXII.

Over \$60,000 but not over \$120,000,	. . .	60 00
Over \$120,000 but not over \$240,000,	. . .	90 00
Over \$240,000 but not over \$360,000,	. . .	120 00
Over \$360,000 but not over \$480,000,	. . .	180 00
Over \$480,000 but not over \$600,000,	. . .	\$ 240 00
Over \$600,000 but not over \$900,000,	. . .	300 00
Over \$900,000 but not over \$1,200,000,	. . .	450 00
Over \$1,200,000,	. . .	600 00

§ 515. Colorado.

The property of a corporation is assessed for both State and local purposes, and a franchise tax is also assessed.

The real estate is assessed at its *situs*. The corporation is assessed upon its personal property where it is situated; but if a corporation owns property in two or more counties, the amount of the tax shall be apportioned between the counties in proportion to the amount of tangible property in each; and so where the property is partly within and partly without the State.²⁶

For the purpose of arriving at the total value of the business and property returns are to be made, by domestic corporations and by foreign corporations doing business in the State.²⁷

"In determining the true value of taxable property, except as otherwise provided in this act, the market value shall be the guide. As to all classes or items of property in respect to which it cannot be fairly said to have a market value, the price it would bring at a fair voluntary sale thereof, the value of the use thereof, and the capability of use, together with any other just method of determination, may be considered by the assessor. Except as herein otherwise provided in determining the value of taxable property in this State, of corporations, foreign and domestic, the value of the capital stock and bonds of each corporation shall be received and considered, and shall be competent evidence of the value of the entire plant of such

²⁶ Col. 1902, ch. 3, § 63.

²⁷ *Ibid.*

corporation, but any and all other evidence of the full and true cash value of said property, both tangible and intangible, shall be received and considered in arriving at the value of the entire plant of such corporation. If there is no market value of the stock, then what it would bring at a fair voluntary sale, the value of the use of the property and the capability of use shall be considered, with other evidence. If neither of the foregoing methods are applicable to any given profit-producing unit, corporate plant or property, then the cost of duplication or other just means may be resorted to. This section shall control the State Board of Equalization as well as the county assessors." ²⁸

"Where corporate property is so assessed as a unit, except where otherwise specially provided for in this act, the value of its real estate in this State and the value of its property beyond the limits of this State not used in the operation of its main business, if any, shall be deducted, and such realty in this State shall be assessed by the assessors in every respect as though owned by individuals or natural persons." ²⁹ In arriving at the value of the property owned by any corporation, foreign or domestic, not only its tangible property, whether it be within the State or partly within and partly without this State, shall be looked to by the assessor and State Board of Equalization, but its intangible property, such as special privileges, rights of way, franchises, contract rights and obligations shall be considered, that is to say: The entire business, plant or enterprise of such corporation shall be valued as a unit, and every element, subject or consideration wherein the use is in inseparable combination with a whole of which it forms a part and which gives to the corporation property an added value for the purposes of income or sale shall be considered in fixing the value for taxable purposes.³⁰

The franchise tax, called a license tax, is imposed upon both

²⁸ *Ibid.* § 60.

²⁹ *Ibid.* § 60.

³⁰ *Ibid.* § 61.

domestic and foreign corporations. Every domestic corporation with a capital stock of twenty-five thousand dollars or over pays to the State an annual tax of two cents on each thousand dollars of capital stock.³¹ Every foreign corporation which has a right to do business within the State pays an annual tax of four cents on each thousand dollars of capital stock; but where the par value of the shares is less than one dollar per share, the rate shall be two and one-half cents per thousand shares.³²

§ 516. Connecticut.

The method of taxing ordinary corporations in Connecticut is a very simple one. The real and personal property are to be taxed like the property of an individual. Therefore all foreign corporations are taxed upon their property within the State; and the same is true of such domestic corporations as by some particular provision of their charters are not taxable upon their capital stock.

“The whole property in this State of every corporation whose stock is not liable to taxation, and which is not required to pay a direct tax to this State in lieu of other taxes, and whose property is not expressly exempt from taxation, and the whole property in this State of every corporation organized under the law of any other State or country, shall be set in its list and liable to taxation in the same manner as the property of individuals.”³³

“The real estate of [such corporations] shall be set in the list of the town in which such real estate is situated, and the personal estate shall be set in the list of the town in which such corporation has its principal place of business, or exercises its corporate powers; . . . and the stockholders of any corporation, the whole property of which is assessed and

³¹ *Ibid.* § 64.

³² *Ibid.* § 65.

³³ Conn. Gen. Stat. 1902, § 2328.

taxed in its name, shall be exempt from assessment or taxation for their stock therein." ³⁴

Shares of the capital stock of any bank, national banking association, trust, insurance, investment and bridge company pay to the State Treasurer one per cent. on the market value of each share less the real estate.³⁵ Every such corporation has a lien on the shares for the amount of the tax, which is paid directly by the corporation.³⁶

The capital stock thus taxed does not mean the money actually paid in by the shareholders, or the par value of the shares. "The capital stock of a corporation was not regarded in the strict technical sense, as a fixed sum of money paid in or agreed to be paid in by the stockholders, but it was regarded as consisting of all the substantial property, real and personal, owned and possessed by the corporation." ³⁷

"To bring a shareholder within the benefit of the statutory exemption, he must show that the real estate, by reason of which he claims it, is not only owned by the company, but owned by it as a part of its capital and surplus. Real estate may be held by a corporation to respond to particular liabilities for the benefit of creditors, which it is sufficient, and not more than sufficient, to meet. In this shareholders have only a remote and subordinate interest. Other funds, and perhaps other real estate may be held by the same corporation, which are set to the account of capital and surplus. In these investments, the creditors being otherwise provided for, the shareholders have a direct and substantial interest. It is to real estate of this latter description only that the statute refers." ³⁸

"The real question is whether such real estate be part of that capital, or capital and surplus, representing, at the date of

³⁴ *Ibid.* § 2329.

³⁵ Conn. Gen. Stat. § 2331.

³⁶ *Ibid.*

³⁷ Torrance, J., in *Security Co. v. Hartford*, 61 Conn. 89, 101, 23 Atl. 699.

³⁸ Baldwin, J., in *Appeal of Barrett*, 73 Conn. 288, 47 Atl. 243.

the return to the town assessors, the excess in value of the net assets, above the amount of corporate debts and liabilities, in which the shareholders are directly interested.³⁹ It is this excess or 'surplus of corporate property' which is treated as equitably owned by the shareholders, and mainly builds up the market value of their shares.⁴⁰ Land acquired and held for the purpose of responding to particular liabilities, whether through action by the corporation or by force of statutory requirements, would not be a part of such capital or surplus to any greater extent than that of its value after deducting the amount of such liabilities."⁴¹

In the absence of express exemption by statute, the value of the real estate could not be deducted, even if the result were double taxation.⁴²

Under the statute, the amount to be deducted from the value of each share is that proportion of its value which the total investment in such real estate as forms part of the capital stock bears to the entire surplus of assets over liabilities.⁴³

The tax thus required to be paid by the stockholders is not in the strict sense a tax on the corporation at all.

"The tax in question is, in form, one against the corporation.⁴⁴ In substance, it is one against each of its non-resident stockholders, to be paid by it in their behalf.⁴⁵ It is imposed only on corporations 'whose stock is liable to taxation, and not otherwise taxed.' It is measured by the number of shares held by non-residents, and the value of each share. These shares do not belong to the corporation, and a tax on their value is virtually a tax against their owners.⁴⁶ Where all the

³⁹ *Batterson's Appeal*, 72 Conn. 374, 376, 44 Atl. 546.

⁴⁰ *Batterson v. Town of Hartford*, 50 Conn. 558, 562; *Security Co. v. Same*, 61 Conn. 89, 23 Atl. 699.

⁴¹ *Baldwin, J.*, in *Appeal of Cutler*, 74 Conn. 35, 49 Atl. 338.

⁴² *Toll Bridge Co. v. Osborn*, 35 Conn. 7.

⁴³ *Batterson v. Hartford*, 50 Conn. 558.

⁴⁴ *State v. Royce*, 68 Conn. 311, 36 Atl. 48.

⁴⁵ *Batterson v. Town of Hartford*, 50 Conn. 558, 560.

⁴⁶ *Oliver v. Washington Mills*, 11 All. (Mass.) 268, 273.

shares in a corporation are massed for purposes of assessment and taxation, this can be regarded as merely a convenient mode of ascertaining the value of its own property.⁴⁷ No such construction can be given to a statute which fastens only upon such shares as are held by a particular class of persons. That now in question does no more than make the defendant the pay-master as respects the state. The non-resident shareholders owe the tax, as respects the corporation. The original law of 1866 was therefore careful to provide (section 2) that every insurance company paying the tax which it imposed should 'have a lien upon the stock of such non-resident stockholders for the reimbursement of said sums so required to be paid.' In Gen. Stat. § 3917, a similar lien is given 'upon the stock of each non-resident stockholder,' with the added words 'to the extent of one per cent. of the value of his stock as contained in said list.' The list to which reference is thus made is that to be returned under the preceding section, which, as now amended, makes the sum 'required to be paid' $1\frac{1}{2}$ per cent. of the value of the stock."⁴⁸ And therefore there is no exemption on account of non-taxable property of the corporation, such as government bonds. "As to the claimed exemption upon bonds of the United States: The tax is not upon the property of the corporation; it is explicitly upon the shares; that is, upon the right of the shareholder to receive his proper proportion of the net profits earned by the exercise of the corporate franchise, and of assets remaining after payment of debts upon dissolution. That he is not the owner of any portion of the government bonds or of any other property held by the corporation; that his right is a distinct and independent property in himself, quite separate from the ownership of the corporation of its assets, and that the state may assess a tax against him upon it at its full value, notwithstanding the fact that the corporation is the owner of un-

⁴⁷ *Nichols v. New Haven & N. Co.*, 42 Conn. 103, 120.

⁴⁸ *Baldwin, J.*, in *State v. Travelers' Ins. Co.*, 70 Conn. 590, 40 Atl. 465, 66 A. S. R. 138.

taxable government securities is so firmly established by judicial determination that it is not now to be considered an open question.”⁴⁹

§ 517. Delaware.

There is no tax on the ordinary personal property of the corporation. Domestic corporations pay an annual franchise tax to the State, but foreign corporations do not pay this tax. For the purpose of assessing this tax certain returns are required to be made annually to the Secretary of State; but these returns include no financial statement of any kind. In the case of certain public-service and insurance company this report shows the amount of gross receipts. “Every other corporation shall file with the Secretary of State on or before the first day of January in each year an annual report, which shall state the location of its principal office in this State; the names of its officers, the amount of its authorized capital, the amount actually paid in, the amount invested in real estate, the tax annually thereon and the amount invested in manufacturing or mining in this State, or both.”⁵⁰

“All other corporations hereafter incorporated under the laws of this State, and not hereinbefore provided for shall pay an annual license fee or franchise tax of one-twentieth of one per centum on all amounts of capital actually paid in up to and including the sum of three million dollars; on all sums of capital stock issued and outstanding in excess of three million dollars and not exceeding five million dollars, an annual license fee or franchise tax of one-fortieth of one per centum and the further sum of thirty dollars per annum per one million dollars or any part thereof, on all amounts of capital stock, issued and outstanding in excess of five million dollars; *Provided* that this Act shall not apply to railroad, railway,

⁴⁹ Pardee, J., in *Batterson v. Hartford*, 50 Conn. 558, 560, citing *Van Allen v. Assessors*, 3 Wall. 573, 18 L. ed. 229; *People v. Comrs.*, 4 Wall. 244, 18 L. ed. 344; *Nat. Bank v. Com.*, 9 Wall. 353, 19 L. ed. 701.

⁵⁰ Del. 1901, ch. 15 (Franchise Tax Law), § 2.

canal or banking corporations, or to savings banks, cemeteries or religious corporations, or to purely charitable or educational associations, or manufacturing or mining corporations, or to any mercantile corporation whose capital actually paid in is invested in a mercantile business carried on within this State, and which is now subject to a license tax for the carrying on of said business under Chapter 117, Volume 13, Laws of Delaware, or to any corporations at least fifty per centum of whose capital stock issued and outstanding is invested in business carried on within this State, and if any other corporation shall have less than fifty per centum of its capital stock issued and outstanding invested in business carried on within this State, such company shall pay the annual license fee or franchise tax herein provided for companies not carrying on business in this State, but shall be entitled in the computation of such tax to a deduction from the amount of its capital stock issued and outstanding of the assessed value of its real and personal estate within this State.⁵¹

There is a provision for retaliatory taxation upon foreign corporations.⁵²

"The provisions of this Act shall not apply to corporations heretofore incorporated and the property of such corporations is hereby made exempt from taxation under the provisions of this Act, such exemption, in the opinion of the General Assembly, being best to promote the public welfare."⁵³

The stockholders are taxed upon "stocks of every kind." The president and secretary of all corporations liable to taxation under the act return to the assessor of the district where the principal office is situated the number, market value and real value of the shares, and the names of the owners. The assessment is to be laid at three-fourths of the actual cash value, and the rate of taxation is thirty cents on each one hundred dollars. Provision is made by which a debtor of a

⁵¹ *Ibid.* § 4.

⁵² *Ibid.* § 9.

⁵³ *Ibid.* § 19.

non-resident creditor must pay the tax and deduct the amount from the interest; but the constitution provides that shares of stock in Delaware corporations are not taxable when owned abroad.⁶⁴

§ 518. District of Columbia.

There is no charter fee or franchise tax, but a special *ad valorem* tax on the entire capital stock.

The capital stock of all corporations other than those herein provided for, organized in the District of Columbia or under the laws of any of the States or Territories of the United States, chiefly for the purpose of, and transacting business within, the District of Columbia, except those exempted by the laws relating to the District of Columbia, is appraised in bulk at its fair cash value by the board of personal-tax appraisers, and the corporation issuing the same is liable for the tax thereon according to such value, and must pay a sum equal to 1½ per cent. on the assessed valuation thereof; but from the assessed valuation of such capital stock is first deducted the value of any and all real estate owned by such corporation in said District, which real estate is separately taxed against said corporation. This does not include newspaper, real estate, and mercantile companies, which by reason of incorporation receive no special franchise or privilege; but all such corporations are rated, assessed, and taxed as individuals conducting business in similar lines are rated, assessed, and taxed.

Each national bank, as the trustee for its stockholders, through its president or cashier, and all other incorporated banks and trust companies in the District of Columbia, through their presidents or cashiers, and all gas, electric lighting, and telephone companies, through their proper officers, must make affidavit to the board of personal-tax appraisers on or before the 1st day of August each year as to the amount of its or their gross earnings for the preceding year ending the 30th day of June, and must pay per annum on such gross earnings

⁶⁴ Del. 1898, ch. 25; Const. Art. 9, § 6.

as follows: Each national bank and all other incorporated banks and trust companies, respectively, 6 per cent.; each gas company, 5 per cent.; each electric lighting and telephone company, 4 per cent. And in addition thereto the real estate owned by each national or other incorporated bank and each trust, gas, electric lighting, and telephone company in the District of Columbia is taxed as other real estate in said District. Street railroad companies pay 4 per cent. per annum on their gross receipts and other taxes. Insurance companies pay $1\frac{1}{2}$ per cent. on premium receipts.

All companies who guarantee the fidelity of any individual or individuals, such as bonding companies, pay $1\frac{1}{2}$ per cent. of their gross receipts in the District of Columbia.

Savings banks having no capital stock and paying interest to their depositors must, through their president or cashier, make affidavit to the board of personal-tax appraisers on or before the 1st day of August in each year as to the amount of their surplus and undivided profits and pay a sum equal to $1\frac{1}{2}$ per cent. on the amount of their surplus and undivided profits on the 30th day of June preceding.

Building associations pay to the collector of taxes of the District of Columbia, 4 per cent. per annum on their gross earnings for the preceding year ending June 30.⁵⁵

§ 519. Florida.

There is no franchise tax. The corporation is taxed upon its property, both real and personal, like an individual. It is provided that "the owner or holder of stock in any incorporated company . . . which is taxed on its capital shall not be taxed as an individual for such stock; *provided* that such stock is returned for assessment by such company."⁵⁶ From which it seems that the corporation is taxed upon the total value of its shares as capital stock.

License taxes are imposed by the State on persons who

⁵⁵ 32 U. S. Stat. p. 619.

⁵⁶ Fla. Rev. Stat. Append. ch. 4010, § 8.

engage in certain forms of business. Counties, cities and towns may impose further taxes of the same kind when the business is carried on within the county, city or town, but only on a business taxed by the State, and the local tax must not exceed fifty per cent. of the State tax. "Merchants, storekeepers and druggists with a capital stock of less than five hundred dollars shall pay a license tax of three dollars; from five hundred to one thousand dollars, shall pay a license tax of five dollars, and from one thousand dollars to five thousand dollars, ten dollars, and over five thousand dollars, fifteen dollars, in each county and for each place of business."⁵⁷

§ 520. Georgia.

There is no franchise tax. A corporation is taxed on its property, both by the State and locally, like an individual. All real and personal estate, whether owned by individuals or corporations, resident or non-resident, is liable to taxation.⁵⁸ Bonds, notes, or other obligations for money, on persons in other States or of other States, or bonds of corporations of other States, and shipping, are the subject of return and taxation in this State.⁵⁹ All moneyed or stock corporations are liable to taxation.⁶⁰ Besides State taxes, county and municipal taxes are levied; the latter limited to one-half of one per cent. *ad valorem*.⁶¹ In addition to the *ad valorem* tax on property, a license fee on business may be imposed.⁶²

The capital stock, it has been held, is not property, nor taxable as such; but in so holding the court has in mind the shares of stock.

"The municipal government of the city of Macon may tax all property owned by the Macon Construction Company, and all the capital that company may actually employ, within the

⁵⁷ *Ibid.* § 10.

⁵⁸ Ga. Code, § 767.

⁵⁹ *Ibid.* § 776.

⁶⁰ *Ibid.* § 777.

⁶¹ *Ibid.* § 719.

⁶² *Carson v. Forsyth*, 94 Ga. 617, 20 S. E. 116.

limits of the city; but the capital stock of the company is neither property owned by it, nor capital which it employs. The stock issued by a corporation is not property owned by it. Such stock is in no sense assets, but, on the contrary, is a liability. Stock in an incorporated company is held and owned by the stockholders. As to them, it is property, and may or may not be subject to municipal taxation; but, relatively to the corporation itself, it is not property at all. Neither a natural nor an artificial person can properly be said to own a chose in action, or written instrument of any sort, which merely evidences the fact that he or it is liable to or indebted to another." ⁶³ Therefore an act was held unconstitutional, on the ground that the taxation was not uniform and *ad valorem*, which provided for a tax on the shares, and exempted the corporation from other taxation; for this act really left all the property of the corporation exempt.⁶⁴

Occupation taxes may be laid both by the municipalities, and by the State in its annual general tax law; but these occupation taxes are and must be in addition to the *ad valorem* tax on all the property of the corporation, which the constitution requires to be laid.⁶⁵ Such is the tax on the gross receipts of an insurance company laid by the city in which they were received; ⁶⁶ the State tax of two and one-half per cent. on the gross receipts of express and telegraph companies, and the State tax of one dollar on each telephone station or box.⁶⁷

All special franchises, meaning thereby a privilege to any person or corporation to exercise the right of eminent domain, to use the highway, or to exercise any public service (not including the mere right to be a corporation by a trading or manufacturing or other corporation exercising no special franchise) shall be valued by the Comptroller-General after returns by

⁶³ Macon v. Macon Construction Co., 94 Ga. 201, 21 S. E. 456.

⁶⁴ Georgia State B. & L. Assoc. v. Savannah, 109 Ga. 63, 35 S. E. 67.

⁶⁵ Atlanta N. B. & L. Assoc. v. Stewart, 109 Ga. 80, 35 S. E. 73.

⁶⁶ Mutual R. F. L. Assoc. v. Augusta, 109 Ga. 73, 35 S. E. 71.

⁶⁷ Atlanta N. B. & L. Assoc. v. Stewart, 109 Ga. 80, 35 S. E. 73.

the owner, and shall be taxed like other property in the manner provided for the taxation of railroad companies.⁶⁸ Where such special franchises are exercised in more than one place, the entire value of the franchises shall be locally apportioned in proportion to the miles operated, as is provided in the case of railroads.⁶⁹ Where it appears that such a corporation is by contract or law bound to pay a certain proportion of its gross receipts or otherwise in return for the grant of the franchise, the amount so paid shall be deducted from the franchise tax.⁷⁰

§ 521. Hawaii.

The property of corporations is taxable like that of individuals; the value of the business as a whole being taken, rather than the aggregate of the separate items of property.

"In all cases where real and personal property, or several classes or kinds of real or personal property respectively, are combined and made the basis of an enterprise for profit, the combined property forming such basis of such enterprise for profit shall be assessed as a whole on its fair and reasonable aggregate value.

"In estimating the aggregate value of each such enterprise for profit there shall be taken into consideration the net profits made by the same, also the gross receipts and actual running expenses; and where it is a company being a corporation whose stock is quoted in the market, the market price thereof, as well as all other facts and considerations which reasonably and fully bear upon such valuation.

"In ascertaining the aggregate value of the property constituting an enterprise for profit for the purpose indicated by this section, there shall be excluded therefrom the value of shares in other Hawaiian corporations held or owned by such enterprise, and all property upon which specific taxes are levied."⁷¹

⁶⁸ Ga. 1902, No. 145, §§ 1, 2, 3.

⁶⁹ *Ibid.* §§ 4, 5.

⁷⁰ Ga. 1903, No. 439.

⁷¹ Hawaii Laws of 1897, § 820.

§ 522. Idaho.

There is no franchise tax. The property of a corporation is assessed like that of an individual. Capital stock of a corporation is exempt to the extent that it is represented by property of the corporation which has been assessed.⁷² The property is assessed in the name of the corporation in the county where it is situated.⁷³ These provisions apply to foreign as well as to domestic corporations.

§ 523. Illinois.

There is no franchise tax. The local taxing districts tax the tangible property of corporations like that of individuals; and the State through a State Board of Equalization taxes the remaining capital stock of most domestic corporations. Taxable property includes "All moneys, credits, bonds or stocks and other investments, the shares of stock of incorporated companies and associations, and all other personal property."⁷⁴ The franchise is to be included as part of the personal property.⁷⁵

"The capital stock of all companies and associations now or hereafter created under the laws of this State except those required to be assessed by the local assessors, as hereinafter provided, shall be so valued by the State Board of Equalization as to ascertain and determine respectively the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association; such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just, and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject however to such change, alteration or amendment as

⁷² *Ida. Polit. Code*, § 1312, cl. 6.

⁷³ *Ibid.* § 1336.

⁷⁴ *Ill. Rev. Stat. ch. 120*, § 1.

⁷⁵ *Porter v. Rockford, R. I. & S. L. R. R.*, 76 Ill. 561.

may be found from time to time to be necessary by said board." ⁷⁶

The State Board of Equalization, in pursuance of the power given by statute, passed the following rules: "For the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies or associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations, respectively, we, the state board of equalization, hereby adopt the following rules and principles, viz.: First. The market or fair cash value of the shares of capital stock and the market or fair cash value of the debt to be determined by reference to the stock exchange or the books of said corporations; and the returns made to the state board, or other means (excluding from such debt the indebtedness for current expenses), shall be combined or added together, and the aggregate amount so ascertained shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies and associations. Second. From the aggregate amount ascertained, as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all tangible property, respectively, of such companies and associations (such equalized or assessed valuation in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise) which this board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state."

These rules were frequently upheld by the courts.⁷⁷

"There is a seeming injustice in taxing corporations which are largely indebted and whose earnings are insufficient to pay the accruing interest, as is alleged to be the fact in the present

⁷⁶ Ill. Rev. Stat. ch. 120, § 3, cl. 4.

⁷⁷ *Porter v. Rockford, R. I. & S. L. R. R.*, 76 Ill. 561; *Pacific Hotel Co. v. Lieb*, 83 Ill. 602; *Distilling & C. F. Co. v. People*, 161 Ill. 101, 43 N. E. 779.

case, to the full extent of the value of all their property and privileges, without regard to their indebtedness; yet it has never been the policy of the legislature to make any discrimination in favor of individuals on this account, and corporations cannot claim an exemption from taxation when, under like circumstances, an individual would not also be exempt to the same extent.”⁷⁸

“It is . . . obvious that, when you have ascertained the current cash value of the whole funded debt and the current cash value of the entire number of shares, you have, by the action of those who above all others can best estimate it, ascertained the true value of the road,—all its property, its capital stock, and its franchises,—for these are all represented by the value of its bonded debt and of the shares of its capital stock.”⁷⁹

In 1900 the board attempted to change these rules so as to diminish the amount of taxation upon corporations which had a large bonded debt, but the change was held illegal.⁸⁰

This tax by the State Board of Equalization is a tax upon personal property.⁸¹ “The kind of property denominated as ‘capital stock’ does not mean shares of stock, either separately or in the aggregate, but designates the property of the corporation subject to taxation as a homogeneous unit, partaking of the nature of personalty, and subject to the burdens imposed upon it at the domicile of the owner.”⁸² This does not give rise to double taxation, since the tangible property specifically taxed is deducted, and the Board will be presumed to have made the deduction fairly. “It has been held that an assessment, by the board, of the capital stock of a corporation for taxation, by first ascertaining the market or fair cash value

⁷⁸ Scholfield, J., in *Porter v. Rockford*, R. I. & S. L. R. R., 76 Ill. 561, 588.

⁷⁹ Miller, J., in *State Railroad Tax Cases*, 92 U. S. 575, 23 L. ed. 669.

⁸⁰ *State Board of Equalization v. People*, 191 Ill. 528, 61 N. E. 339, 58 L. R. A. 513.

⁸¹ Baker, J., in *Keokuk & H. Bridge Co. v. Peo.*, 161 Ill. 132, 43 N. E. 691.

⁸² *Cooper v. Corbin*, 105 Ill. 224; *Ottawa G. L. & C. Co. v. Peo.*, 138 Ill. 336, 514, 27 N. E. 924.

of the shares of capital stock, and the market or fair cash value of its debts, exclusive of those for current expenses, and adding these together, and taking from the sum the equalized valuation of all its tangible property, was proper, as showing the balance of the capital stock over and above the assessed value of the tangible property. We said in *Hotel Co. v. Lieb*,⁸³ 'The assessed valuation of the tangible property is deducted to avoid double taxation, and, when this is done, the residue apparently represents only the valuation of the intangible property.' So far as we know to the contrary, the capital stock, in the case at bar, may have exceeded in value the tangible property, or real and personal property, assessed by the assessor. It may have appeared to the board of equalization, by appropriate proof, that the stock assessed by it exceeded the value of the tangible property as locally assessed."⁸⁴

Though the shares of stock have no value, the capital stock may have a large value. Thus where the shares of a bridge company were worthless because the large bonded debt was greater than all the property and rights of the corporation, the court upheld an assessment of over one million dollars upon the capital stock. "If shares of stock in a corporation are worthless because of its debts, the creditors take the place of the stockholders; and, if these debts have value, it is presumptively because there is an equal amount in value of corporate property from which payment can be made."⁸⁵

The corporations excepted from the provisions for assessment by the State Board of Equalization are as follows:

"This clause shall not apply to the capital stock, or shares of capital stock, of banks organized under the general banking laws of this State: *provided*, further, that companies and associations organized for purely manufacturing purposes, or for printing, or for publishing of newspapers, or for the improv-

⁸³ *Hotel Co. v. Lieb*, 83 Ill. 602; *Glass Co. v. McCaleb*, 81 Ill. 556.

⁸⁴ *Magruder, J.*, in *Distilling & C. F. Co. v. Peo.*, 161 Ill. 101, 43 N. E. 779.

⁸⁵ *Baker, J.*, in *Keokuk & H. Bridge Co. v. Peo.*, 161 Ill. 132, 43 N. E. 691, citing *Pacific Hotel Co. v. Lieb*, 83 Ill. 602.

ing and breeding of stock, shall be assessed by the local assessors in like manner as the property of individuals is required to be assessed." ⁸⁶

The constitutional provision that taxation shall be uniform as to the class upon which it operates is not violated by this provision; it does not prohibit the legislature from classifying corporations for taxation. ⁸⁷

"The capital stock and franchises of corporations and persons, except as may be otherwise provided, shall be listed and taxed in the county . . . where the principal office or place of business of such corporation or person is located in this State. If there be no principal office or place of business in this State then at the place in this State where any such corporation or person transacts business." ⁸⁸

The provisions of this chapter apply not merely to the excepted domestic corporations, but to all foreign corporations. ⁸⁹

§ 524. Indiana.

There is no franchise tax. The method of taxation of corporations is to ascertain the whole value of the property (tangible and intangible) and tax it like the property of individuals.

"For the purpose of taxation real property shall include all lands within the State and all buildings and fixtures thereon and appurtenances thereto excepting in cases otherwise expressly provided by law; personal property shall include all goods and chattels within the State, all ships, boats and vessels belonging to inhabitants of this State whether at home or abroad, and their appurtenances; all goods, chattels and effects belonging to inhabitants of this State situate without this

⁸⁶ Ill. Rev. Stat. ch. 120, § 3, cl. 4.

⁸⁷ Coal Run Coal Co. v. Finlen, 124 Ill. 666, 17 N. E. 11.

⁸⁸ Ill. Rev. Stat. ch. 120, § 7.

⁸⁹ A corporation formed by the consolidation of a domestic and a foreign corporation is taxable like a domestic corporation. Keokuk & H. Bridge Co. v. Peo., 161 Ill. 132, 43 N. E. 691.

State, except the property actually and permanently invested in business in another State shall not be included; all indebtedness due to inhabitants of this State above the amounts respectively owed by them whether such indebtedness is due from individuals or corporations, public or private, and whether such debtors reside within or without the State; all shares in corporations organized under the laws of this State when the property of such corporations is not exempt or is not taxable to the corporation itself; all shares in banks organized in this State under any law of the United States, but in estimating the value of such shares deductions shall be made of the value of all real estate taxed to the bank; all shares in foreign corporations except national banks, owned by inhabitants of the State; all moneys; all circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency; all annuities and royalties; all interests owned by individuals in lands, the fee of which is in this State or in the United States, except as hereinafter provided. Property exempted from taxation by the laws of the United States shall not be included. Shares in corporations, all the property of which is taxable to the corporation itself, shall not be assessed to the shareholder. Lands sold by the State, including lands forfeited to the sinking fund, the university fund and all other trust funds, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed. All lands reserved to or for any individual by any treaty between the United States and any Indian tribe or nation shall be liable to taxation from the time such treaty shall have been confirmed.”⁹⁰

“All corporate property, including capital stock and franchises, except where some other provision is made by law, shall be assessed to the corporation as to a natural person in the name of the corporation. The place where its principal

⁹⁰ Ind. Rev. Stat. 1901, § 8411.

office in this State is situated shall be deemed its residence, but if there be no principal office in the State then such property shall be listed and taxed at any place in the State where the corporation transacts business."⁹¹

"Every franchise granted by any law of this State, owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation shall be listed and assessed as personal property."⁹²

The "capital stock" which is taxable is the capital of the company, not the shares of the stockholders. Since this capital is made up of all the property of the corporation, if it has no property except tangible property, taxed as such, it is not permissible to add anything on account of the capital stock.⁹³ But unless it is clear that there is no property but the tangible property, there is capital stock to assess. The whole value of the capital stock, as found by the Board of Equalization, less the value of the tangible property, is to be assessed as capital stock.⁹⁴

"If the capital stock exceeds in value the tangible property subject to taxation and assessed for taxation, then, to the extent of its value in excess of the value of the tangible property, it may be listed and assessed; for it is apparent that in such a case there is not double taxation. It cannot be assumed that the tangible property necessarily represents the value of the capital stock, for the business of a corporation owning comparatively little tangible property may be so profitable as to impress upon its stock a value much beyond its tangible property; or it may be the owner of a franchise which gives the stock a value much greater than that of the tangible property of which it is the owner."⁹⁵

⁹¹ *Ibid.* § 8422.

⁹² *Ibid.* § 8435.

⁹³ *Hyland v. Brazil Block Coal Co.*, 128 Ind. 335, 26 N. E. 672.

⁹⁴ *Rev. Stat.* § 8492.

⁹⁵ *Elliott, J.*, in *Hyland v. Central Iron & Steel Co.*, 129 Ind. 68, 28 N. E. 308, 13 L. R. A. 515.

The valuation of the intangible property is to be made by the Board of Equalization.

"It is true that such board cannot legally assess capital stock, where the capital is invested in tangible property listed for taxation, unless such stock exceeds in value the property in which it is invested; but who shall determine the question as to whether the stock is of greater value than the tangible property? The board of equalization, we think, must decide that question. If it makes a mistake, and reaches a wrong conclusion, can it be said that its assessment is void? We think not. We think it is binding on the corporation assessed until set aside or vacated by appeal, or some other authorized, direct proceeding." ⁹⁶

§ 525. Iowa.

There is no franchise tax. Corporations generally are taxed upon their actual property, and the shareholders are also taxable on their shares at the principal office of the corporation. Even if this be regarded as double taxation it is admissible.⁹⁷

"The property of all corporations for pecuniary profit shall be subject to taxation, the same as that of individuals."⁹⁸ "All property subject to taxation shall be valued at its actual value . . . and shall be assessed at twenty-five per cent. of such actual value. . . . Actual value of property as used in this chapter shall mean its value in the market in the ordinary course of trade."⁹⁹

These provisions make it impossible to exempt the property of corporations from local taxation.¹⁰⁰ "The shares of stock of any corporation organized under the laws of this State, except those which are not organized for pecuniary profit,

⁹⁶ Coffey, J., in *Jones v. Rushville Nat. Gas Co.*, 135 Ill. 595, 35 N. E. 390.

⁹⁷ *Des Moines Water Co.'s Appeal*, 48 Ia. 324; *Cook v. Burlington*, 59 Ia. 252, 13 N. W. 113.

⁹⁸ Ia. Const. Art. 8, § 2.

⁹⁹ Ia. Code of 1897, § 1305.

¹⁰⁰ *Davenport v. Chicago, R. I. & P. R. R.*, 38 Ia. 633.

and except corporations otherwise provided for in this act, shall be assessed to the owners thereof, at the place where its principal business is transacted, the assessment to be on the value of such shares on the first day of January in each year; but in arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate owned by them, either in this State or elsewhere, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporation, except real estate situated within the State, shall not be otherwise assessed."

Provision is made for statements showing shares issued and par value, authorized and paid in capital, value of real estate, dividends, gross and net earnings, surplus, and highest and average price of stocks. The assessor if dissatisfied makes own valuation.

The corporations described in the preceding sections shall be liable for the payment of the taxes assessed to the stockholders of such corporation, and may collect from them.¹⁰¹

"Any person, firm or corporation, owning, or having in its possession, or under its control, within the state, with authority to sell the same, any personal property purchased with a view of its being sold, . . . shall be held to be a merchant for the purposes of this title; . . . The assessment shall be made at the average value of the stock during the year next preceding the time of assessing."¹⁰²

§ 526. Kansas.

There is no franchise tax. The property of a corporation is taxed to it directly. The real estate is taxed where it is situated. Specific chattels may be specifically listed for taxation or they may be taxed as part of the capital stock.

¹⁰¹ Ia. Code of 1897, §§ 1323, 1324, 1325.

¹⁰² *Ibid.* § 1318.

Property situated outside the State cannot be taxed, even if owned by a domestic corporation.¹⁰³ "Every . . . person designated by any . . . corporation shall list all personal property subject to taxation of which such . . . corporation is the owner, lessee or occupant, having any interest in or exercising any control over any personal property, including all moneys in his possession or subject to his order, check or draft, and all credits due or to become due from any person, company or corporation, whether in or out of the county or State in which such person may reside or such company be located, except as herein otherwise provided."¹⁰⁴ Debts owing in good faith are deducted from credits.¹⁰⁵ A merchant lists the average amount of his stock kept for sale.¹⁰⁶

No person shall be required to include in the list of personal property any portion of the capital stock of any company or corporation which is required to be listed by such company or corporation; but all incorporated companies except banks and banking associations, manufacturing companies and stock-yard companies, shall be required to list by their designated listing agent, in the township or city where the principal office of such company is kept, the full amount of stock paid in and remaining as capital stock, at its true value in money, and such stock shall be taxed as other personal property; *Provided*, That such amount of stock of such companies as may be invested in real or personal property in the State of Kansas, which at the time of listing said capital stock shall be particularly specified and given to the assessors for taxation, shall be deducted from the amount of said capital stock.¹⁰⁷ This applies to foreign corporations.

There is no direct franchise tax, but the franchise is reached by taxing the shares of stock, which are taxed at their actual

¹⁰³ Fisher v. Comrs., 19 Kan. 414.

¹⁰⁴ Kan. Gen. Stat. ch. 158, § 12.

¹⁰⁵ *Ibid.* § 16.

¹⁰⁶ *Ibid.* § 54.

¹⁰⁷ *Ibid.* § 28.

value, if any, after deducting the proper proportion of the capital stock already taxed.¹⁰⁸

Besides this property tax, it is open to the taxing power to impose a tax on business. "It is enough for the courts that both occupations and property are legitimate objects of taxation; that they are essentially dissimilar; that constitutional provisions regulating the taxation of one do not control that of the other; and that there are no constitutional inhibitions on the taxation of business, either by the legislature directly, or by municipal corporations thereto empowered by the legislature."¹⁰⁹

§ 527. Kentucky.

In Kentucky there is no franchise tax in the ordinary sense. A corporation is subject to both State and local taxation. Not only may the local taxing district tax the corporation upon its property, real and personal, but in the case of public-service companies and other corporations having a special franchise that franchise is taxed locally at the valuation placed upon it by the State Board.¹¹⁰

"All real and personal property within this State, and all personal estate of persons residing in this State, and of all corporations organized under the laws of this State, whether the property be in or out of this State,¹¹¹ including intangible property, which shall be considered and estimated in fixing the value of corporate franchises as hereinafter provided, shall be subject to taxation unless the same be exempt from taxation by the Constitution, and shall be assessed at its fair cash value, estimated at the price it would bring at a fair voluntary sale."¹¹²

¹⁰⁸ *Ryan v. Comrs.*, 30 Kan. 185, 2 Pac. 156.

¹⁰⁹ *Brewer, J.*, in *Newton v. Atchison*, 31 Kan. 151, 1 Pac. 288, 47 A. R. 486, 488.

¹¹⁰ *South Covington & C. St. Ry. v. Bellevue*, 105 Ky. 283, 49 S. W. 23.

¹¹¹ This provision is constitutional; *Com. v. Union Refrigerator Co.*, 80 S. W. 490.

¹¹² Ky. 1902, ch. 128, Art. 1, § 2. For these provisions for taxing franchises, see *infra*, § 615.

In taxing credits all actual debts of the corporation are to be deducted; but this does not include contingent liabilities; and therefore an insurance company cannot deduct its liability to policy holders, and is taxable on its reserve fund.¹¹³

It is expressly provided in the Constitution ¹¹⁴ that "the general assembly may, by general laws only, provide for the payment of license fees on franchises, stock used for breeding purposes, the various trades, occupations and professions, or a special or excise tax; and may, by general laws, delegate the power to counties, towns, cities and other municipal corporations, to impose and collect license fees on stock used for breeding purposes, on franchises, trades, occupations and professions." This license fee is quite independent of the property and franchise taxes, and may be laid on a corporation in addition to the latter taxes.¹¹⁵

§ 528. Louisiana.

There is no franchise tax, but the "charter or franchise" is taxed as part of the property. The Constitution contemplates only two kinds of corporate taxation; property tax and license tax.¹¹⁶ The State tax is levied by the legislature, and the local taxing districts are permitted to levy a similar tax for local purposes. Property for purposes of taxation includes:

"All real estate with buildings and other improvements . . . all railroads . . . all telephone and telegraph lines . . . all charters and franchises . . . all personal property . . . all rights, credits, bonds, and securities of all kinds, promissory notes, open accounts, and other obligations; all cash. The amount of cash on hand will not be offset or lessened because money is owed, or by liabilities of any kind, but must represent the full amount standing in the name of the person to be assessed or subject to his control . . . all moneys loaned at interest . . . all shares of stock in all banking companies or

¹¹³ *Kenton Ins. Co. v. Covington*, 86 Ky. 213, 5 S. W. 461.

¹¹⁴ Ky. Const. § 181.

¹¹⁵ *South Covington & C. St. Ry. v. Bellevue*, 105 Ky. 283, 49 S. W. 23.

¹¹⁶ *Parker v. North B. & M. Ins. Co.*, 42 La. Ann. 428, 7 So. 599.

associations incorporated or unincorporated, chartered under the laws of Louisiana, or under the laws of any other State than Louisiana or under the laws of the National Government; and all other articles and things whatever possessing any money value. This enumeration shall not be construed so as to exempt from taxation any property or values not enumerated herein; provided that no articles or things hereinabove enumerated shall be assessed more than once in the same year.”¹¹⁷ All corporations except banks shall be assessed directly upon all property owned by such corporations, which is taxable under section 1; but unless three months’ prior and continuous ownership can be shown in any holdings of national, State or municipal bonds, or stock in any other corporation whatsoever, then the market value of such holdings shall be assessed to such corporation as so much ‘money in possession.’ The sworn statement of condition made next preceding the date of listing shall be considered in making the assessment. Such corporations make a sworn statement of condition or of cost of their property, and of the earning capacity of the corporation, which said earning capacity shall form a basis of estimating the value of its charter or franchise.¹¹⁸ An estimate of the value of the franchise measured chiefly by the earning capacity is proper.¹¹⁹

The taxation of foreign corporations is regulated by the following constitutional provision:

“Corporations, companies or associations organized or domiciled out of the State, but doing business therein may be licensed and taxed by a mode different from that provided for home corporations or companies, provided said different mode of license shall be uniform, upon a graduated system, and said different mode of taxation shall be equal and uniform as to all such corporations, companies or associations that transact the same kind of business.”¹²⁰ It would seem that the property

¹¹⁷ La. 1890, Act 106, § 1. To the same effect, La. 1898, Act 170.

¹¹⁸ *Ibid.* § 28.

¹¹⁹ *Crescent City R. R. v. New Orleans*, 44 La. Ann. 1057, 11 So. 681.

¹²⁰ La. Const. Art. 242.

tax of a foreign corporation is the same as that of a domestic corporation.

License taxes are imposed upon persons and corporations by the State; and similar taxes may be imposed by the local authorities, provided no greater license tax may be imposed than is imposed for State purposes.¹²¹ The amount of license taxes imposed on manufacturing corporations by the State are as follows,¹²² upon the annual gross receipts:

Where the amount is not over \$25,000,	. . \$	15 00
Over \$25,000 but not over \$30,000,	. .	19 50
Over \$30,000 but not over \$40,000,	. .	21 00
Over \$40,000 but not over \$50,000,	. .	28 00
Over \$50,000 but not over \$75,000,	. .	35 00
Over \$75,000 but not over \$90,000,	. .	52 50
Over \$90,000 but not over \$95,000,	. .	63 00
Over \$95,000 but not over \$100,000,	. .	65 50
Over \$100,000 but not over \$150,000,	. .	70 00
Over \$150,000 but not over \$200,000,	. .	105 00
Over \$200,000 but not over \$300,000,	. .	140 00
Over \$300,000 but not over \$400,000,	. .	210 00
Over \$400,000 but not over \$500,000,	. .	280 00
Over \$500,000 but not over \$750,000,	. .	350 00
Over \$750,000 but not over \$1,000,000,	. .	525 00
Over \$1,000,000 but not over \$2,000,000,	. .	700 00
Over \$2,000,000 but not over \$3,000,000,	. .	1,400 00
Over \$3,000,000 but not over \$4,000,000,	. .	2,100 00
Over \$4,000,000 but not over \$5,000,000,	. .	2,800 00
Over \$5,000,000 but not over \$6,000,000,	. .	3,500 00
Over \$6,000,000 but not over \$7,000,000,	. .	4,200 00
Over \$7,000,000 but not over \$8,000,000,	. .	4,900 00
Over \$8,000,000 but not over \$9,000,000,	. .	5,600 00
Over \$9,000,000 but not over \$10,000,000,	. .	7,000 00
\$10,000,000 or over,	. . . .	8,000 00

¹²¹ *Ibid.* Art. 229.

¹²² La. 1898, No. 171, § 3, cl. 1.

Upon mercantile corporations the State license fee, based on the gross annual sales, is as follows:¹²³

(1) Wholesale dealers:

Where the amount is not over \$250,000,	. \$ 50 00
Over \$250,000 but not over \$500,000, .	. 100 00
Over \$500,000 but not over \$600,000, .	. 150 00
Over \$600,000 but not over \$800,000, .	. 200 00
Over \$800,000 but not over \$1,000,000, .	. 250 00
Over \$1,000,000 but not over \$1,500,000, .	. 300 00
Over \$1,500,000 but not over \$2,000,000, .	. 400 00
Over \$2,000,000 but not over \$2,500,000, .	. 550 00
Over \$2,500,000 but not over \$3,000,000, .	. 700 00
Over \$3,000,000 but not over \$4,000,000, .	. 750 00
Over \$4,000,000 but not over \$5,000,000, .	. 1,000 00
Over \$5,000,000 but not over \$5,500,000, .	. 1,500 00
Over \$5,500,000 but not over \$6,000,000, .	. 2,000 00
Over \$6,000,000 but not over \$6,500,000, .	. 2,500 00
Over \$6,500,000 but not over \$7,000,000, .	. 3,000 00
Over \$7,000,000, . . . . .	. 3,500 00

(2) Retail dealers:

Where the amount is not over \$5,000, .	. \$ 5 00
Over \$5,000 but not over \$15,000, .	. 10 00
Over \$15,000 but not over \$20,000, .	. 15 00
Over \$20,000 but not over \$25,000, .	. 20 00
Over \$25,000 but not over \$30,000, .	. 25 00
Over \$30,000 but not over \$40,000, .	. 30 00
Over \$40,000 but not over \$50,000, .	. 40 00
Over \$50,000 but not over \$75,000, .	. 50 00
Over \$75,000 but not over \$100,000, .	. 75 00
Over \$100,000 but not over \$150,000, .	. 100 00
Over \$150,000 but not over \$200,000, .	. 150 00
Over \$200,000 but not over \$250,000, .	. 200 00
Over \$250,000 but not over \$300,000, .	. 250 00

¹²³ *Ibid.* § 6.

Over \$300,000 but not over \$400,000, . . .	300 00
Over \$400,000 but not over \$600,000, . . .	400 00
Over \$600,000 but not over \$700,000, . . .	550 00
Over \$700,000 but not over \$750,000, . . .	700 00
Over \$750,000 but not over \$1,000,000, . . .	750 00
Over \$1,000,000 but not over \$1,500,000, . . .	1,000 00
Over \$1,500,000 but not over \$2,000,000, . . .	1,500 00
Over \$2,000,000 but not over \$2,500,000, . . .	2,000 00
Over \$2,500,000 but not over \$3,000,000, . . .	2,500 00
Over \$3,000,000 but not over \$3,500,000, . . .	3,000 00
Over \$3,500,000,	3,500 00

The license tax is a regular tax, and therefore cannot be laid upon a corporation which by its charter is exempt from all taxation.¹²⁴

Where a corporation subject to a license tax does business in more than one place within the State, the combined local license fees must be no greater than the State license tax; and therefore when such a corporation has rightly paid local license fees at its branch offices, the amount of such fees must be subtracted from the full amount of the tax, equal to the State tax, levied at the main office.¹²⁵ The tax upon the gross receipts of a foreign insurance company, not exacted as a condition of entering the State, is a property tax, not a license fee; and as such it is unconstitutional as a special tax laid on one class of taxpayers.¹²⁶

§ 529. Maine.

Domestic corporations pay a franchise tax, but foreign corporations do not. Corporations are taxed locally on all their property. "Such property, both real and personal, is taxable for state, county, city, town, school district and

¹²⁴ *Citizens' Bank v. Parker*, 192 U. S. 73, reversing *State v. Citizens' Bank*, 52 La. Ann. 1086, 27 So. 709.

¹²⁵ *New Orleans v. Liverpool & L. & G. Ins. Co.*, 52 La. Ann. 1904, 28 So. 267.

¹²⁶ *Parker v. North B. & M. Ins. Co.*, 42 La. Ann. 428, 7 So. 599.

parochial taxes, to be assessed and collected in the same manner and with the same effect as upon similar taxable property owned by individuals." ¹²⁷ The real estate is taxable at its *situs*.¹²⁸

The personal estate is taxable at the principal office of the company ¹²⁹ except as provided in the following section: "Machinery employed in any branch of manufacture, goods manufactured or unmanufactured, and real estate belonging to any corporation, except when otherwise expressly provided, shall be assessed to such corporation in the town or place where they are situated or employed."¹³⁰

Shares of stock are assessable; in assessing stockholders for their shares in any such corporation, their proportional part of the value of such machinery, goods and real estate, shall be deducted from the value of such shares.¹³¹

The value of the real estate to be deducted is the real value, not the assessed value.¹³² Non-resident shareholders are assessed at the place where the corporation is; and the town has a lien on such stock for the taxes.¹³³ No dividend must be paid to the holder of such stock until the tax is paid; but the corporation must pay the dividend to the town to discharge the tax.¹³⁴

The value of a franchise cannot be included in the value of the property for local taxation. "No legislation of this state has authorized municipal assessors to impose a tax upon a corporation on account of its franchise,—the powers and privileges granted to it by the sovereign power of the state. The state may impose such a tax, as has been frequently done and upheld; or assessors, in placing the valuation upon the

¹²⁷ Me. Rev. Stat. ch. 9, § 16.

¹²⁸ *Ibid.* § 8.

¹²⁹ *Ibid.* § 12.

¹³⁰ *Ibid.* § 13.

¹³¹ *Ibid.* § 13.

¹³² *Wheeler v. Comrs.*, 88 Me. 174, 33 Atl. 983.

¹³³ Me. Rev. Stat. ch. 9, § 30.

¹³⁴ *Ibid.* §§ 33, 34.

shares of a corporation, should take into account the value of the franchise, because the value of the franchise necessarily affects the value of the shares, which by statute, are taxable to the owner thereof." ¹³⁵

The State imposes a franchise tax upon all domestic corporations, based on the amount of capital stock. "Every corporation incorporated under the laws of this state, except such as are excepted by [the following section], shall pay an annual franchise tax of five dollars, provided the authorized capital of said corporation does not exceed fifty thousand dollars, of ten dollars, provided said authorized capital stock exceeds fifty thousand dollars, and does not exceed two hundred thousand dollars, of twenty-five dollars, provided said authorized capital exceeds two hundred thousand dollars, and does not exceed five hundred thousand dollars, of fifty dollars, provided said authorized capital exceeds five hundred thousand dollars, and does not exceed one million dollars, and the further sum of twenty-five dollars per annum per one million dollars, or any part thereof, in excess of one million dollars." ¹³⁶

"Every corporation incorporated under the laws of this state, excepting religious, charitable, educational and benevolent corporations, and excepting such corporations as may be organized under chapter fifty-five of the revised statutes, and such corporations as are liable to a franchise tax under some other law of this state, and such corporations as have been or may hereafter be excused from filing annual returns under the provisions of section thirty-six of chapter forty-six of the revised statutes, so long as its franchises remain unused, shall, on or before the first day of June, annually, file in the office of the secretary of state, a return signed by its president or treasurer, verified under oath, containing the names of its directors, president, treasurer and clerk, with the residence of each, the location of its principal office in this state, and

¹³⁵ Wiswell, J., in *Wheeler v. Comrs.*, 88 Me. 174, 33 Atl. 983.

¹³⁶ Me. Rev. Stat. ch. 8, § 18.

the amount of its authorized capital stock; and for this purpose the secretary of state shall furnish blanks in proper form and safely keep in his office all such returns. Every corporation failing to comply with the provisions of this section shall forfeit to the state two hundred dollars to be recovered with costs, in an action of debt to be prosecuted in the name of the state by the Attorney General."¹³⁷

Special taxes are laid on certain corporations. Thus foreign banking corporations pay a tax to the State of one-fourth of one per cent. per annum on the amount of business done within the State.¹³⁸ And real estate corporations are taxed upon all their property, real and personal, including undivided profits, at the place where their land is situated, and not upon the shares of stock.¹³⁹

§ 530. Maryland.

There is no franchise tax, and no tax on the personal property of the corporation as such (except in the case of corporations not taxable on their stock but without exemption of their property).¹⁴⁰ The taxation is placed upon the real estate¹⁴¹ and stock and bonds of the corporation. All shares in a domestic corporation shall be valued and assessed for State, county and municipal taxation, to the owners where they reside; shares in foreign corporations including banks other than foreign national banks shall be assessed to the owner where he resides.¹⁴²

Shares in corporations shall be valued for taxation by deducting from their value the proper proportion of the value of the real property of the company,¹⁴³ and of State debt or

¹³⁷ *Ibid.* ch. 47, § 26.

¹³⁸ Me. 1899, ch. 123 § 1.

¹³⁹ Me. Rev. Stat. ch. 9, § 26.

¹⁴⁰ Md. G. L. Art. 81, § 4, amended 1896, ch. 120.

¹⁴¹ *Ibid.* § 2.

¹⁴² *Ibid.* § 2.

¹⁴³ *Ibid.* § 141.

shares in other corporations already taxed as such, owned by the company.¹⁴⁴ The taxable value of shares held by non-residents shall, for county and municipal purposes, be valued to the owners where the corporation is situated, but shall be collected from the corporation.¹⁴⁵

The corporation makes return of its corporate indebtedness by bonds or otherwise, subtracting such as are due non-residents; and it pays the tax upon all debts due to residents.¹⁴⁶ Bonds of domestic or foreign corporations and shares of stock in foreign corporations owned by residents are valued at their market value (unless they pay no interest or dividend, in which case they are not valued at all), and are taxed for the State on such valuation at the regular rate; for local taxation they are taxed at the rate of thirty cents on each hundred dollars.¹⁴⁷

Mercantile corporations pay a tax graded according to the average amount and value of the stock of goods on hand, as follows: ¹⁴⁸

Where the amount is not over \$1,000,	.	.	\$ 12 00
Over \$1,000 but not over \$1,500,	.	.	15 00
Over \$1,500 but not over \$2,500,	.	.	18 00
Over \$2,500 but not over \$4,000,	.	.	22 00
Over \$4,000 but not over \$6,000,	.	.	30 00
Over \$6,000 but not over \$8,000,	.	.	40 00
Over \$8,000 but not over \$10,000,	.	.	50 00
Over \$10,000 but not over \$15,000,	.	.	65 00
Over \$15,000 but not over \$20,000,	.	.	80 00
Over \$20,000 but not over \$30,000,	.	.	100 00
Over \$30,000 but not over \$40,000,	.	.	125 00
Over \$40,000,	.	.	250 00

¹⁴⁴ *Ibid.* § 142.

¹⁴⁵ *Ibid.* § 141.

¹⁴⁶ *Ibid.* § 87.

¹⁴⁷ Md. 1896, ch. 143; see an apparently inconsistent statute, approved on the same day, ch. 120, § 194.

¹⁴⁸ Md. Gen. L. ch. 56, §§ 37-49.

§ 531. Massachusetts.

Part of the property of every corporation is taxed locally, and the corporation is taxed by the State.

The real estate of all corporations, the machinery of all manufacturing corporations, and in addition merchandise of foreign corporations are taxed locally where they are situated.¹⁴⁹

A State tax commissioner is appointed, to whom all corporations make an annual return of their property and shares.

"Such return shall be filed by the tax commissioner, and shall be open only to the inspection of the tax commissioner, his clerks and assistants, and such other officers of the commonwealth as may have occasion to inspect it for the purpose of assessing or of collecting taxes."¹⁵⁰

"The tax commissioner shall annually ascertain from the returns required by the provisions of this act, or in any other manner, the market value of the shares of the capital stock of each domestic corporation which is subject to the provisions of this act, and shall estimate therefrom the fair cash value of all of the shares constituting its capital stock on the preceding first day of May, which shall, for the purposes of this act, be taken as the value of its corporate franchise. From such value there shall be deducted the value as found by the tax commissioner of its real estate and machinery within the commonwealth subject to local taxation and of securities which, if owned by a natural person resident in this commonwealth, would not be liable to taxation; also the value as found by the tax commissioner of its property situated in another state or country and subject to taxation therein. From such value there shall not be deducted securities which, if owned by a natural person resident in this commonwealth, would be liable to taxation. For the purposes of this section, the tax commissioner may take the value at which such real estate and machinery is assessed in the city or town where

¹⁴⁹ Mass. Rev. L. ch. 14, §§ 37, 38; Mass. 1903, ch. 437, § 71.

¹⁵⁰ Mass. 1903, ch. 437, § 48.

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In the capital stock are not included proposed but unissued new shares, even though partly or wholly paid for.¹⁵³

"Every foreign corporation [doing business in the State] shall, in each year, at the time of filing its annual certificate of condition, pay to the treasurer and receiver general, for the use of the commonwealth, an excise tax to be assessed by the tax commissioner of one hundredth of one per cent. of the par value of its authorized capital stock as stated in its annual certificate of condition; but it may deduct from such tax the amount of taxes upon property paid by it to any city or town in the commonwealth during the preceding year, and the amount of such excise tax shall not in any one year exceed the sum of two thousand dollars."¹⁵⁴

The State tax thus imposed upon corporations "is not a tax upon property, though the amount of the capital stock or the extent of the business transacted may properly afford the means of computing the amount of the tax,"¹⁵⁵ "but on the right or interest of each stockholder in the whole corporate organization, its franchise and privileges, as has already been explained, estimated at its market value."¹⁵⁶

"The aggregate market value of all the shares of a corporation, representing as it does the estimate put, not merely on the property of the corporation, but also on the rights, privileges, capacities and present and prospective results of the corporate organization and business—in other words, on its franchise—[is] a legitimate and just method of arriving at a basis on which to calculate an excise or tax. . . . The aggregate market value of all the shares or stock affords a reasonable and equitable mode of measuring the value of the franchise."¹⁵⁷

¹⁵³ *Boston & A. R. R. v. Com.*, 157 Mass. 68, 31 N. E. 696.

¹⁵⁴ Mass. 1903, ch. 437, § 75.

¹⁵⁵ *Endicott, J.*, in *Com. v. Lancaster Savings Bank*, 123 Mass. 493, 495.

¹⁵⁶ *Bigelow, C. J.*, in *Com. v. Hamilton Mfg. Co.*, 12 All. (Mass.) 298, 309, citing *Queen v. Arnaud*, 9 Q. B. 806, 817; *Utica v. Churchill*, 33 N. Y. 161, 237.

¹⁵⁷ *Ibid.* p. 305.

Since the tax on the value of the capital stock is a tax on a privilege, not on property, it is not obnoxious to the provisions of the Massachusetts constitution which require all taxes on property to be proportional; nor for the same reason is it necessary to deduct from the value of the stock the value of non-taxable government bonds held by the corporation.¹⁵⁸ For the same reason it is not necessary that the amount deducted from the value of the stock as the value of real estate of the corporation and the amount for which such real estate is assessed locally should be the same.¹⁵⁹

On the other hand, since the tax is laid upon the privilege of acting as a corporation, it cannot be laid after the corporation has ceased to have that right, as where the corporation has been enjoined from doing business and a receiver appointed.¹⁶⁰ But the corporation cannot escape the tax by failing to file a certificate, without which it is forbidden to carry on business. "The franchise which subjects the corporation to taxation is the right to do business legally by complying with the laws. . . . Nothing short of the loss of the franchise as a power that may be exercised, if the corporation chooses to comply with the law, can leave it free from liability to taxation under the statute."¹⁶¹

No local tax can be imposed upon a domestic corporation in Massachusetts for its personal property or income.¹⁶²

§ 532. Michigan.

There is no franchise tax. Corporations are taxed upon their real estate, and their remaining property is taxed together as capital stock; except corporations formed under the

¹⁵⁸ *Com. v. Hamilton Mfg. Co.*, 12 All. (Mass.) 298.

¹⁵⁹ *Tremont & Suffolk Mills v. Lowell*, 178 Mass. 469, 59 N. E. 1007.

¹⁶⁰ *Com. v. Lancaster Savings Bank*, 123 Mass. 493.

¹⁶¹ *Attorney Gen. v. Massachusetts P. L. Gas Co.*, 179 Mass. 15, 60 N. E. 389.

¹⁶² *Boston W. P. Co. v. Boston*, 9 Met. (Mass.) 199; *Fall River v. Comrs.*, 125 Mass. 567.

Act of 1903, which pay taxes on their real and personal property like individuals.

"All corporations formed or existing under this act shall be liable to be assessed for all real and personal estate held by them in this State, at its true value, and shall pay thereon a tax for township, village, city, county, and State purposes, the same as other real and personal estate, and such tax shall be assessed, collected, and paid in the same manner as other taxes on real and personal estate are required to be assessed, collected, and paid: *Provided*, Nothing herein contained shall authorize the taxing of the capital stock of such corporation as such capital stock." ¹⁶³

Other ordinary corporations are taxed according to the following act:

"The officers of any corporation shall make out and deliver to the assessor a sworn statement, including the amount of capital stock authorized and paid in, the number and market or actual value of the shares, the cash value of its personal property, the amount of its *bona fide* indebtedness (not for current expenses, or any contracted for purchase or improvement of its property) and the value of its real estate. The value of the real estate shall be deducted from the cash value of the shares, and the balance, if any, assessed as the cash value of the personal estate. The amount of indebtedness shall be deducted from the cash value of its personal property, and the balance, if any, assessed as personal." ¹⁶⁴

The property is to be taxed where the office is located according to the articles; or if there is more than one office, where the corporation transacts its principal business. If there is no principal office within the State, the property shall be assessed where the corporation or its agent transacts business. ¹⁶⁵

"The property of corporations paying specific taxes shall

¹⁶³ Mich. 1903, Act 232, § 31.

¹⁶⁴ Mich. 1893, Act 6, § 19.

¹⁶⁵ Mich. 1903, Act 235.

be exempt as to the property covered by such taxation, except when otherwise provided by law. All other property of such corporation shall be taxed under this act."¹⁶⁶

§ 533. Minnesota.

There is no franchise tax. Property is taxed for State and local purposes; the rate for State purposes is fixed by the legislature, but the whole tax is collected locally.¹⁶⁷

All real and personal property in the State is taxable.¹⁶⁸ The capital stock and franchises of corporations are listed and taxed at the principal place of business of the corporation; or if there is no principal office within the State, then at the place within the State where the corporation transacts business.¹⁶⁹ No shares of stock are taxed when the corporation which issues the stock is taxed on its capital and property in the State.¹⁷⁰ All property shall be assessed at its full value.¹⁷¹

"Personal property shall, for the purposes of taxation, be construed to include . . . all public stocks and securities, all stock in turnpikes, railroads, canals, and other corporations (except national banks) out of the State, owned by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this State; . . . all shares of stock in any bank organized or that may be organized under any law of the United States, or of this State; . . . and all such improvements upon lands the title to which is still vested in any railroad company or any other corporation whose property is not subject to the same mode and rule of taxation as other property."¹⁷² This applies to foreign as well as domestic corporations.

¹⁶⁶ *Ibid.*

¹⁶⁷ Minn. Stat. § 1557.

¹⁶⁸ *Ibid.* § 1508.

¹⁶⁹ Minn. 1902, ch. 4, § 1.

¹⁷⁰ Minn. Stat. § 1523.

¹⁷¹ *Ibid.* § 1536.

¹⁷² *Ibid.* § 1510.

The corporation is to make a sworn statement, setting forth the amount of capital stock authorized and paid up, the number and the market or actual value of the shares, the total indebtedness (except for current expenses), and the value of its real and personal property. The value of its property and the amount of its indebtedness are subtracted from the total value of its shares, and the remainder, if any, is listed as "bonds and stocks." The real and personal property is listed the same as that of individuals;¹⁷³ and this means the tangible property only.

"The method there provided for is the very common and most equitable and efficient one,—of reaching the franchises and other intangible property for purposes of taxation through the capital stock. The 'capital stock' (using the term in the sense in which it is evidently used in this section) is, as has been said, 'a business photograph of all the corporate possessions and possibilities,' and represents its business opportunities and capacities as well as its tangible assets. They enter into, and go to make up, the value of the stock. It is well settled that these franchises, although neither visible nor tangible, are property which may be taxed the same as any other property. Hence a very common method of taxing corporations and stock companies is to list and assess all their tangible property, real and personal, the same as the like property of other persons is listed and assessed, and also list and assess the capital stock at its actual or market value, less the value of its tangible real and personal property otherwise specifically listed and assessed. This system reaches every element of property value owned by the corporation, and at the same time avoids double taxation. This is clearly the scheme of taxation contemplated and provided for by section 1530, with one exception, which will be considered hereafter. It is evident, in view of the entire scheme, that the value of the personal property in the seventh item, which is to be specifically listed and assessed, and de-

¹⁷³ *Ibid.* § 1530.

ducted from the market or actual value of the shares of stock, refers solely to tangible personal property, and does not include franchises. It would be wholly unreasonable to assume that the legislature would adopt the scheme of reaching the franchises and other intangible property of a corporation through the taxation of its capital stock, and at the same time turn around and specifically tax as a separate item of personal property, and deduct from the value of the stock, the very intangible property which they were endeavoring to reach through the taxation of the stock.”¹⁷⁴

But the provision for deducting the indebtedness was held to be unconstitutional as creating inequality of taxation. “Such a provision is in direct conflict with the constitutional requirement that all taxes shall be as nearly equal as may be, and that all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state. The indebtedness presumably affects the value of the stock as directly as do the assets of the corporation. The former depreciates, while the latter appreciates, its value. The practical effect of this provision is to allow a double deduction of the amount of the corporate indebtedness. . . .

“The evident intention was to reach for taxation the franchises and other intangible property of these corporations and associations as effectually and completely as possible. This the legislature thought could be best accomplished by listing and assessing the value of the stock, which, as already suggested, represents every element of property value, tangible and intangible, owned by corporations or associations; but, in enumerating the deductions to be made, they erroneously included their indebtedness, presumably because they failed to perceive that this had already entered into, and gone to fix, the value of the stock, or that such a deduction would necessarily result in inequality of taxation. But, with this deduction omitted, what remains will effect the full and fair taxation

¹⁷⁴ Mitchell, J., in *State v. Duluth Gas & Water Co.*, 76 Minn. 96, 78 N. W. 1032.

of all the intangible property of these corporations and associations,—the very purpose which the legislature apparently had in mind. For these reasons our conclusion is that the remainder of the section should be held valid, notwithstanding the invalidity of the objectionable provision. The result is that the franchises of the defendants could be taxed only through the taxation of their stock in the manner provided in section 1530.”¹⁷⁵

§ 534. Mississippi.

There is no franchise tax. Corporations pay a tax on their property, being assessed “in the county where the principal office or place of transacting business is situated; and if there shall be no such principal office or place of business,” then where it carries on business.¹⁷⁶ “The president or other officer of any joint stock company or corporation the capital stock of which is taxable, other than banks and railroads, shall . . . deliver . . . a written statement under oath of the capital stock paid in, and its market value, and to whom each share belongs; and on failure to furnish such statement, the tax shall be assessed on the whole capital authorized by the charter.”¹⁷⁷

The tax provided by these sections is a tax upon all elements of the corporation's property; the real estate and tangible personal property, and in addition its intangible property, which forms part of the value of the capital stock. “It is obvious that the purpose is to tax, under the comprehensive designation of ‘corporate stock at its market value,’ all species of property owned by the corporation,—whatever enters as a factor in determining its value. It is also evident that taxation of its real and personal property in specie is not taxation of all the various elements of value; for this would exclude, in all cases, the value of the franchise, and also its investments in securities of a nontaxable nature. . . . Though the legis-

¹⁷⁵ *Ibid.*

¹⁷⁶ Miss. Code, § 3750.

¹⁷⁷ *Ibid.* § 3758.

lature might have levied both an *ad valorem* tax and a privilege tax upon the company, that levied is an *ad valorem* tax, and it is not to be presumed that the legislative purpose was to tax the same property twice. In many of the States, when corporate property is assessed, it is provided that there shall be subtracted from its real value the assessed value of its real estate. Under such statutes, all danger of a double assessment is obviated. While our law contains no such provision, we can conceive no more satisfactory and certain process by which the legislative purpose can be carried into effect, nor is there any reason why the assessor and supervisors may not resort to it in determining the taxable value of the stock." ¹⁷⁸

A license tax is exacted of corporations doing a mercantile business, as follows, based on the amount of stock in each store: ¹⁷⁹

Where the amount is not over \$300,	. . .	\$ 2 50
Over \$300 but not over \$1,000,	. . .	5 00
Over \$1,000 but not over \$2,000,	. . .	10 00
Over \$2,000 but not over \$3,500,	. . .	15 00
Over \$3,500 but not over \$5,000,	. . .	20 00
Over \$5,000 but not over \$7,500,	. . .	25 00
Over \$7,500 but not over \$10,000,	. . .	30 00
Over \$10,000 but not over \$12,000,	. . .	35 00
Over \$12,000 but not over \$15,000,	. . .	40 00
Over \$15,000 but not over \$20,000,	. . .	50 00
Over \$20,000 but not over \$25,000,	. . .	60 00
Over \$25,000 but not over \$35,000,	. . .	85 00
Over \$35,000 but not over \$50,000,	. . .	100 00
Over \$50,000 but not over \$75,000,	. . .	150 00
Over \$75,000 but not over \$100,000,	. . .	175 00
Over \$100,000 but not over \$250,000,	. . .	200 00
Over \$250,000,	. . .	250 00

¹⁷⁸ Cooper, J., in *State v. Simmons*, 70 Miss. 485, 12 So. 477.

¹⁷⁹ Miss. 1898, ch. 5, § 79.

§ 535. Missouri.

There is no franchise tax. The property of all manufacturing and business corporations, and all other corporations the taxation of which is not otherwise provided for by law, shall be assessed and taxed to such corporations in their corporate names.¹⁸⁰ The real estate is taxable where it is situated ¹⁸¹ and so is the personal property of business and manufacturing corporations,¹⁸² while the personal property of other corporations, when taxed, appears to be assessed "where the owner resides."¹⁸³ For State purposes twenty-five cents is payable on each hundred dollars of assessed property,¹⁸⁴ while further taxes are levied for local purposes.¹⁸⁵

The term personal property . . . shall . . . include bonds, stocks, moneys, credits, the capital stock, undivided profits and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion or interest in such stock, profits or means, by whatsoever name they may be designated.¹⁸⁶ A foreign corporation is taxed on its real estate and personal property within the State.¹⁸⁷

§ 536. Montana.

There is no franchise tax. The property of a corporation is taxed like that of an individual, the capital stock being taxed as a whole. "The term 'property' includes moneys, credits, bonds, stocks, franchises and all other matters and things, real, personal, and mixed, capable of private ownership; but this must not be construed so as to authorize the taxation of the stocks of any company or corporation when

¹⁸⁰ Mo. Rev. Stat. § 9153.

¹⁸¹ *Ibid.* §§ 9169, 9170.

¹⁸² *Ibid.* § 9152.

¹⁸³ *Ibid.* § 9121.

¹⁸⁴ *Ibid.* § 9122.

¹⁸⁵ *Ibid.* § 9273.

¹⁸⁶ Mo. Rev. Stat. § 7510.

¹⁸⁷ *Ibid.* §§ 1014, 9118.

the property of such company or corporation represented by such stocks is within the state and has been taxed.”¹⁸⁸

“The capital stock and franchises of corporations and persons, except as may be otherwise provided, must be listed and taxed in the county, town or district where the principal office or place of business of such corporation or person is located; if there be no principal office or place of business in the State, then at the place in the State where any such corporation or person transacts business.”¹⁸⁹

A license tax is imposed upon telephone companies of seventy-five cents per year for each instrument in use. This is valid when confined to instruments used solely in business within the State.¹⁹⁰ Upon mercantile corporations a license fee as follows, graded on the amount of the average sales:¹⁹¹

Where the amount is not over \$4,800,	. . . \$ 12 00
Over \$4,800 but not over \$15,000,	. . . 36 00
Over \$15,000 but not over \$30,000,	. . . 48 00
Over \$30,000 but not over \$60,000,	. . . 60 00
Over \$60,000 but not over \$120,000,	. . . 96 00
Over \$120,000 but not over \$240,000,	. . . 144 00
Over \$240,000 but not over \$360,000,	. . . 180 00
Over \$360,000 but not over \$480,000,	. . . 240 00
Over \$480,000 but not over \$600,000,	. . . 300 00
Over \$600,000 but not over \$900,000,	. . . 480 00
Over \$900,000 but not over \$1,200,000,	. . . 720 00
Over \$1,200,000,	. . . 900 00

§ 537. Nebraska.

There is no franchise tax. All corporations are taxable on their property locally. This property in general includes all intangible property of the corporation, but in the case of cer-

¹⁸⁸ Mont. Polit. Code, § 3680.

¹⁸⁹ *Ibid.* § 3713.

¹⁹⁰ State v. Rocky Mountain Bell Tel. Co., 27 Mont. 394, 71 Pac. 311.

¹⁹¹ Mont. Polit. Code, § 4064.

tain particular corporations a tax on the gross receipts takes the place of a tax on the intangible property.

"All property in this State not expressly exempt therefrom shall be subject to taxation, and shall be valued at its actual value."¹⁹² "The capital stock and franchise of corporations and persons except as otherwise provided shall be listed and taxed in the county, precinct, township, city or village and school district where the principal office or place of business of such corporation or person is located within this State. If there be no principal office or place of business in this State, then at the place in this State where any such corporation or person transacts business."¹⁹³

The property, including franchises within the State, of foreign corporations, is thus reached: "Every company incorporated by the authority of any other State or government and doing business in this State shall [make out a statement containing name, etc.,] a description of all the real and personal property owned by said corporation in said county and the value thereof, together with the true value of its franchise in such county. Such statement shall also contain the amount of gross earnings of such corporation from its business within the state, and the expenses incurred in transacting the same."¹⁹⁴ The assessor may make a valuation if not satisfied with the valuation returned; and he shall assess to the corporation the value of its franchise in addition to the assessed valuation of its property.¹⁹⁵ "Any foreign corporation doing business under the laws of this state and owning a special or general franchise from any city of the state shall furnish a report to the assessor the same as required from companies incorporated under the laws of this state."¹⁹⁶

¹⁹² Neb. 1903, ch. 73, § 12.

¹⁹³ *Ibid.* § 29.

¹⁹⁴ *Ibid.* § 71.

¹⁹⁵ *Ibid.* §§ 72, 73.

¹⁹⁶ *Ibid.* § 73.

§ 538. Nevada.

There is no special corporation tax. The property, real and personal, of corporations is taxed like that of individuals.¹⁹⁷ Personal property includes the capital stock of corporations, and is taxed where it is situated;¹⁹⁸ " *Provided*, That whenever any portion of the property of any such company shall be assessed and taxed in the county wherein the same is located, then, upon presentation, at the principal office of such company, of the certificate or receipt of the collector of said county that such taxes have been paid in another county, the same shall be deducted at the principal office from the aggregate amount of taxes imposed upon or paid by said county, for the same property, in the county wherein the principal office of said company is situated." ¹⁹⁹

A license fee is required of mercantile corporations graded according to the average amount of sales, as follows: ²⁰⁰

Where the amount is not over \$12,000,	. . . \$ 30 00
Over \$12,000 but not over \$60,000,	. . . 45 00
Over \$60,000 but not over \$120,000,	. . . 60 00
Over \$120,000 but not over \$240,000,	. . . 90 00
Over \$240,000 but not over \$360,000,	. . . 120 00
Over \$360,000 but not over \$480,000,	. . . 180 00
Over \$480,000 but not over \$600,000,	. . . 240 00
Over \$600,000 but not over \$900,000,	. . . 300 00
Over \$900,000 but not over \$1,200,000,	. . . 450 00
Over \$1,200,000,	. . . 600 00

§ 539. New Hampshire.

There is not taxation of corporations by the State. The real estate of corporations is locally taxable where it is situated;²⁰¹ and the personal property is taxable to the corpo-

¹⁹⁷ Const. Art. 8, § 2.

¹⁹⁸ Nev. Comp. L. §§ 1082, 1084.

¹⁹⁹ *Ibid.* § 1084.

²⁰⁰ *Ibid.* § 1192.

²⁰¹ *Nashua Savings Bank v. Nashua*, 46 N. H. 389.

ration at its location.²⁰² "Stock in corporations . . . shall be taxed to the general owner thereof in the town in which he resides, if in this State; otherwise to the corporation in the town in which its principal office or place of business in the State is." ²⁰³ "No statute provisions shall be so construed as to subject any stock to double taxation." ²⁰⁴ As a result of these statutes, the stock having been assessed once to the stockholders, as it is held, cannot be assessed to the corporation, ²⁰⁵ or *vice versa*; and therefore when the corporation has been assessed upon its tangible property, the amount must be deducted from the stock taxed in the hands of the stockholders.

Foreign manufacturing corporations are taxed like similar domestic corporations.²⁰⁶

§ 540. New Jersey.

The taxation of all corporations, both foreign and domestic, in New Jersey includes both a local and a State tax.

A franchise tax is assessed by the State upon ordinary domestic business corporations (but not on foreign corporations) under the following act:

"All corporations incorporated under the laws of this state, other than those which are subject to the payment of a state franchise tax assessed upon the basis of gross receipts, shall . . . pay an annual license fee or franchise tax of one-tenth of one per centum on all amounts of capital stock issued and outstanding up to and including the sum of three million dollars; on all sums of capital stock issued and outstanding in excess of three million dollars and not exceeding five million dollars, an annual license fee or franchise tax of one-twentieth

²⁰² N. H. Pub. Stat. ch. 56, § 9.

²⁰³ *Ibid.* § 7.

²⁰⁴ *Ibid.* ch. 55, § 9.

²⁰⁵ *Nashua Savings Bank v. Nashua*, 46 N. H. 389; *Cheshire County Tel. Co. v. State*, 63 N. H. 167.

²⁰⁶ N. H. Pub. Stat. ch. 148, § 21.

of one per centum, and the further sum of fifty dollars per annum per one million dollars, or any part thereof, on all amounts of capital stock issued and outstanding in excess of five million dollars; *provided*, that this act shall not apply to railway, canal or banking corporations, or to savings banks, cemeteries or religious corporations, or purely charitable or purely educational associations not conducted for profit, or manufacturing or mining corporations at least fifty per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this state, and which mining or manufacturing corporations shall have stated in the annual return to the state board of assessors where the mine or manufacturing establishment of such corporation or corporations is or are located, the character of the ores mined or the goods manufactured, the total amount of its capital stock embarked in the business of mining or manufacturing and the amount of capital stock actually employed in New Jersey in carrying on such mining or manufacturing business; if any manufacturing or mining company carrying on business in this state shall have less than fifty per centum of its capital stock, issued and outstanding, invested in business carried on within this state, such company shall pay the annual license fee or franchise tax herein provided for companies not carrying on business in this state, but shall be entitled, in the computation of such tax, to a deduction from the amount of its capital stock issued and outstanding of the assessed value of its real and personal estate so used in manufacturing or mining.”²⁰⁷

The tax laid by this act is a franchise tax, imposed for the privilege of transacting business in this State.²⁰⁸

“Although the amount to be paid is determined by the amount of the capital stock and the duration of the corporate

²⁰⁷ N. J. P. L. 1901, p. 31; Corp. Supp. § 150.

²⁰⁸ *Evening Journal Ass. v. State Board*, 47 N. J. L. 36, 54 A. R. 114; *State v. Richards*, 52 N. J. L. 156, 18 Atl. 582; *Standard U. C. Co. v. Attorney General*, 46 N. J. Eq. 270, 19 Atl. 733, 19 A. S. R. 394.

life, yet these are only the criteria chosen by the legislature for ascertaining the probable value of the corporate franchise which the company assumed. The tax is not levied upon the corporate property or business. Such a tax may be collected by the state granting the corporate franchise, no matter how the property of the company may be invested or employed, or where it may be situate."²⁰⁰

For this reason the tax is not subject to diminution because some of the capital of the corporation is invested in non-taxable property, such as patent rights.²¹⁰ Therefore the tax does not violate the provisions of the State constitution²¹¹ that "property shall be assessed for taxes under general rules, and by uniform rules, according to its true value;"²¹² nor does such a tax upon a domestic corporation engaged in interstate commerce violate the Federal constitution.²¹³ Of such a tax Garrison, J., said:

"The franchise that is taxed as property is the privilege enjoyed by a corporation of exercising certain powers derived from the state, whereas the franchise with which we have to do is the right to exist in corporate form, without reference to the powers that, under such form, the company may exercise. . . . In this state we tax each of these so-called franchises. The former, as in the case of the right to own and operate a railroad, is taxed as property having a true value, which it is the duty of the state board to ascertain for the purposes of constitutional assessment. On the other hand, the naked right of existing in corporate form is taxed, as in the case before us, not at its true value, as it would have to be if it were property, but at a sum arbitrarily imposed by the

²⁰⁰ Dixon, J., in *Honduras Commercial Co. v. Assessors*, 54 N. J. L. 278, 23 Atl. 668.

²¹⁰ *Home Ins. Co. v. New York*, 134 U. S. 594, 33 L. ed. 1025; *Marsden Co. v. Assessors*, 61 N. J. L. 461, 39 Atl. 638.

²¹¹ N. J. Const. Art. 4, § 7, cl. 12.

²¹² *Standard Underground Cable Co. v. Atty. Gen.*, 46 N. J. Eq. 270, 19 Atl. 733, 19 A. S. R. 394.

²¹³ *Lumberville D. B. Co. v. Assessors*, 55 N. J. L. 529, 26 Atl. 711.

legislature as an annual fee, the amount of which is to be computed by reference to the capital of the company as a criterion. It is, in short, a poll tax levied upon domestic corporations for the right to be. Such a tax is not upon property or assets, and does not in any way concern the nature of the business the company may be authorized to carry on. If the business chance to be one of commercial intercourse with other states, the burden incidental to corporate existence does not, under the federal decisions just cited, constitute a regulation of that commerce."

The local tax upon real and personal estate has not been superseded by the State franchise tax,²¹⁴ and is required in addition to the State tax.²¹⁵

A foreign corporation pays five per cent. upon the amount of gross receipts from business done in the State of New Jersey; provided that if the corporation can show that by the laws of its own State a less rate of taxation is exacted from New Jersey corporations doing business there, then the State Board of Assessors may readjust the assessment so as to conform to the rates imposed by such State.

Foreign corporations authorized to do business in New Jersey file an annual report, showing the amount of gross receipts. For failure to file the report or to pay the tax the certificate of authority shall be revoked.

"The provisions of this section shall not apply to any foreign manufacturing or mining corporation, at least fifty per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this state, or if any such foreign manufacturing or mining company so carry on business in this State shall have less than fifty per centum of its capital stock issued and outstanding invested in manufacturing or mining business, carried on within this State, such company shall be entitled to have deducted from the basis of tax hereby imposed such proportion of its gross receipts as

²¹⁴ *Tide Water Pipe Co. v. Berry*, 53 N. J. L. 212, 21 Atl. 490.

²¹⁵ N. J. 1896, ch. 185, § 110.

are received from goods or property so manufactured or mined by it within this State.”²¹⁶

§ 541. New Mexico.

There is no general corporation tax in the Territory; but the property of corporations is taxed like that of individuals, and there is besides an occupation tax upon merchants.

“All property in this Territory not exempt by law shall be subject to taxation.”²¹⁷

The term “personal property” includes everything which is a subject of ownership, not included within the term real estate. The term “credit” includes every claim and demand for money or other valuable thing and every annuity.²¹⁸

The property of every firm and corporation must be assessed in the county where the property is situated, and in the name of the firm or corporation. Such firm or corporation shall pay the tax, and may charge the same to its partners or stockholders, according to their respective share. The owner or holder of stock in any firm or corporation, the entire capital or property of which is assessed, must not be assessed individually for such stock.²¹⁹ Shares of corporations and companies shall be assessed at their cash value.²²⁰ This would cover all stock owned within the Territory.

A license or occupation tax on merchants is exacted according to the following scale: Where annual sales are five to ten thousand dollars, an annual-tax of ten dollars; on sales from ten to twenty thousand dollars, twenty dollars; twenty to fifty thousand dollars, fifty dollars; fifty to seventy-five thousand dollars, seventy-five dollars; seventy-five to one hundred thousand dollars, one hundred dollars; over one hundred thousand dollars, one hundred fifty dollars.²²¹

²¹⁶ N. J. 1904, ch. 221, § 2.

²¹⁷ N. Mex. Comp. L. § 4018.

²¹⁸ *Ibid.* § 4019.

²¹⁹ *Ibid.* § 4025.

²²⁰ *Ibid.* § 4028.

²²¹ *Ibid.* § 4141.

§ 542. New York: general principles.

Corporations, both domestic and foreign, are taxable locally and also by the State. The taxation is regulated by the Tax Law of 1896.²²²

"All real property within this state, and all personal property situated or owned within this State, is taxable unless exempt from taxation by law."²²³

The exemption must be by statute.²²⁴ Among the statutory exemptions the following are important to corporations:

"13. A bond, mortgage, note, contract, account or other demand, belonging to any person not a resident of this state, sent to or deposited in this state for collection; the products of another state, owned by a nonresident of this state and consigned to his agent in this state for sale on commission for the benefit of the owner; moneys of a nonresident of this state, under the control or in the possession of his agent in this state when transmitted to such agent for the purpose of investment or otherwise.

"14. The deposits in any bank for savings which are due depositors, the accumulations in any domestic life insurance corporation, held for the exclusive benefit of the insured, other than real estate and stocks, now liable for taxation; and the accumulations of any incorporated co-operative loan association upon the shares of such association held by any person."²²⁵

"The terms 'personal estate,' and 'personal property,' as used in this chapter, include chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held; debts due by inhabitants of this state to persons not re-

²²² N. Y. 1896, ch. 908.

²²³ Tax Law, § 3.

²²⁴ *Rochester v. Coe*, 25 App. Div. 300.

²²⁵ Tax Law, § 4.

siding within the United States for the purchase of any real estate; public stocks, stocks in moneyed corporations, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate." ²²⁶

"The real estate of all incorporated companies liable to taxation, shall be assessed in the tax district in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital shall be assessed in the tax district where the principal office or place for transacting the financial concerns of the company shall be, or if such company have no principal office, or place for transacting its financial concerns, then in the tax district where the operations of such company shall be carried on. In the case of toll bridges, the company owning such bridge shall be assessed in the tax district in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company are collected in several tax districts, the company shall be assessed in the tax district in which the treasurer or other officer authorized to pay the last preceding dividend resides." ²²⁷

The assessors shall assess corporations liable to taxation in their respective tax districts upon their assessment-rolls in the following manner:

1. In the first column the name of each corporation, and under its name the amount of its capital stock paid in and secured to be paid in; the amount paid by it for real property then owned by it wherever situated; the amount of all surplus profits or reserve funds exceeding ten per centum of their capital, after deducting therefrom the amount of said real property and the amount of its stock, if any, belonging to the State and to incorporated literary and charitable institutions.

2. In the second column the quantity of real property

²²⁶ *Ibid.* § 2.

²²⁷ *Ibid.* § 11.

except special franchises owned by such corporation and situated within their tax district.

3. In the third column the actual value of such real property, except special franchises.

4. In the fourth column the amount of the capital stock paid in and secured to be paid in, and of all such surplus profits or reserve funds as aforesaid, after deducting the sums paid out for all the real estate of the company, wherever the same may be situated, and then belonging to it, and the amount of stock, if any, belonging to the people of the State and to incorporated literary and charitable institutions.

5. In the fifth column the value of any special franchise owned by it as fixed by the State board of tax commissioners.²²⁸

Special franchises are taxed in connection with real property according to the following provisions: "The State board of tax commissioners shall annually fix and determine the valuation of each special franchise subject to assessment in each city, town, or tax district. . . . The valuations of every special franchise as so fixed by the State board shall be entered by the assessors or other officers in the proper column of the assessment roll before the final revision and certification of such roll by them, and become part thereof with the same force and effect as if such assessment had been originally made by such assessor or other officer."²²⁹

No deduction shall be allowed in the assessment of personal property by reason of the indebtedness of the owner contracted or incurred in the purchase of non-taxable property or securities owned by him or held for his benefit, nor for or on account of any indirect liability as surety, guarantor, indorser or otherwise, nor for or on account of any debt or liability contracted or incurred for the purpose of evading taxation.²³⁰

Non-residents of the State doing business in the State,

²²⁸ *Ibid.* § 31, as amended 1899, ch. 712.

²²⁹ Tax Law, § 42, as amended 1904, ch. 382.

²³⁰ *Ibid.* § 6.

either as principals or partners, shall be taxed on the capital invested in such business, as personal property, at the place where such business is carried on, to the same extent as if they were residents of the State.²³¹

Under this provision it is not doing business within the State to ship into the State manufactured products for sale, or even to keep an office, sell the goods there, and remit the proceeds to the home State.²³² If, however, at the local office it had a manager, employing travelling salesmen, and collecting the price of goods sold by them, it is doing business in the State and is taxable on its capital there employed.²³³ So the filing of a certificate of intention to engage in business will justify holding that the foreign corporation is engaged in business;²³⁴ and so where the sales agency becomes a permanently established business.²³⁵

§ 543. New York: local taxation of capital stock.

The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value.²³⁶

²³¹ *Ibid.* § 7. Foreign corporations are taxable at their principal office under this section: *P. v. McLean*, 80 N. Y. 254.

²³² *People v. Comrs.*, 23 N. Y. 242; *People v. Barker*, 5 App. Div. 246, 39 N. Y. S. 154, affirmed 149 N. Y. 623 (disapproving *People v. Barker*, 36 N. Y. S. 76); *People v. Wells*, 42 Misc. 423, 87 N. Y. S. 84; *People v. Wells*, 42 Misc. 86, 85 N. Y. S. 533.

²³³ *People v. Barker*, 157 N. Y. 159, 51 N. E. 1043; *People v. Feitner*, 49 App. Div. 108, 62 N. Y. S. 1107.

²³⁴ *People v. Feitner*, 60 App. Div. 628, 70 N. Y. S. 836; *People v. Feitner*, 31 Misc. 553, 65 N. Y. S. 518.

²³⁵ *People v. Wells*, 41 Misc. 144, 83 N. Y. S. 936.

²³⁶ Tax Law, § 12.

The taxation of the capital stock locally as personal property is to be distinguished from the State tax on the franchise.

The taxable "capital stock" is not the stock held by the stockholders but the capital owned by the corporation, and paid in, and used as a basis of the business enterprise;²³⁷ and therefore the market value of the shares do not form a proper basis for the valuation.

The general principles on which the capital stock is to be valued for purposes of local assessment were stated by the court thus: ²³⁸ "*First*, the subject of valuation and assessment is never the share stock, but always the company's capital and surplus. *Second*, such capital and surplus must be assessed at its own value, and when that is correctly known and ascertained, no other value can be substituted for it."²³⁹ *Third*, where its amount and value are undisclosed and unknown the assessors may consider the market value of the share stock and the general condition of the company as indicative of surplus or deficiency, and of the probable amount of either. *Fourth*, they may further resort to such means of information when the amount of capital and surplus is disclosed, but the assessors have sufficient reason to disbelieve the statement, and such reason is founded upon facts established by competent proof." The amount of dividend paid during the year cannot form the basis of valuation, unless it is shown that the dividend was paid out of the earnings of the year.²⁴⁰

The value of a franchise of the corporation cannot be included in the value of the capital stock.²⁴¹ Nor can the value of the good will. "Good will, like a franchise, is a privilege which the courts will protect as a right of value. As such it is

²³⁷ *P. v. Coleman*, 126 N. Y. 433, 27 N. E. 818; *P. v. Barker*, 85 Hun, 210, 32 N. Y. S. 990.

²³⁸ *Finch, J.*, in *P. v. Coleman*, 126 N. Y. 433, 448, 27 N. E. 818.

²³⁹ *Acc. P. v. Comrs.*, 95 N. Y. 554; *People v. Feitner*, 92 App. Div. 518, 87 N. Y. S. 304. See *People v. Morgan*, 47 App. Div. 126, 62 N. Y. S. 191.

²⁴⁰ *People v. Wells*, 42 Misc. 606, 87 N. Y. S. 595.

²⁴¹ *P. v. Barker*, 146 N. Y. 304, 40 N. E. 996; *P. v. Barker*, 152 N. Y. 417, 46 N. E. 875; *People v. Wells*, 42 Misc. 606, 87 N. Y. S. 595.

property, though intangible. Under the franchise tax law of corporations it is taxable with the franchise as forming a part of the value of the share stock.²⁴² But good will, as such, is not taxable for general town, county, or municipal purposes. It is not real estate, nor is it personal property, as defined by the provisions of the tax law. . . . It will be observed that good will is not included as 'personal property,' as used in this section, and is consequently not included as personal property liable to taxation. The clause, 'and such portions of the capital of incorporated companies liable to taxation on their capital,' has reference to the actual value of the tangible property of incorporated companies, and not to the value of its share stock, which would include its franchise and good will, which is taxable, as we have seen, under another statute.²⁴³ It consequently follows that good will is not taxable property for town, county, and municipal purposes."²⁴⁴

Debts due to domestic corporations are included in the assessment.²⁴⁵ Debts due to a foreign corporation would not generally be included, not being property situated within the State; but debts due for goods sold by the corporation within the State, in the regular course of business, have a *situs* within the State, and are to be included in the assessment.²⁴⁶

After the question had for some time been left unsettled²⁴⁷ it was finally decided that a patent right, being granted by the United States, is not to be included in the capital stock for taxation; this being distinguished from the tangible property, the fruit of the discovery, which is within the jurisdiction of the State.²⁴⁸

²⁴² *People v. Roberts*, 159 N. Y. 70, 53 N. E. 685, 45 L. R. A. 126; *People v. Roberts*, 154 N. Y. 101, 47 N. E. 980.

²⁴³ *People v. Barker*, 146 N. Y. 304, 312, 40 N. E. 996; *People v. Coleman*, 126 N. Y. 433, 27 N. E. 818, 12 L. R. A. 762.

²⁴⁴ *Haight, J.*, in *P. v. Dederick*, 161 N. Y. 195, 55 N. E. 927.

²⁴⁵ *P. v. Feitner*, 54 App. Div. 217.

²⁴⁶ *P. v. Barker*, 23 App. Div. 524.

²⁴⁷ *P. v. Barker*, 139 N. Y. 55, 34 N. E. 722.

²⁴⁸ *P. v. Assessors*, 156 N. Y. 417, 51 N. E. 269, 42 L. R. A. 290.

In the case of a domestic corporation the amount of liabilities must be deducted from the assets.²⁴⁹ Surplus up to ten per cent. is deducted, by the terms of the statute; and in addition any property invested in non-taxable property, such as government bonds.²⁵⁰ Such a course is not, as was urged in one case, a double deduction of the bonds; though they form part of the general assets, and to deduct them is equivalent to treating them as part of the surplus. "If the relator elects in good faith to invest its apparent surplus in securities that are not taxable under the laws of this state, the assessing officer is bound by the statute to recognize its rights to do so."²⁵¹

Debts and liabilities incurred in the purchase of non-taxable property are not to be deducted;²⁵² and therefore a corporation cannot deduct a debt contracted in the purchase of the goodwill of a business.

Dividends declared by the corporation become a debt due to the stockholders, and would therefore be subtracted from the assets of the company. But where all the stockholders left the amount of the dividends in the business, not intending to withdraw it, the amount was included in the capital stock. "Mere formal action, such as declaring the dividends, without any intention to pay them over to the stockholders, and without any change in the actual status of the invested funds of the corporation used in the transaction of its business, cannot accomplish anything. It would seem to be apparent that these moneys were just as much in substance and in fact property of the corporation, invested in its business, as if there had been no change whatever attempted. Merely calling them dividends, and nothing more, does not remove them from the category of assets. The money has remained in the business,

²⁴⁹ *P. v. Dederick*, 161 N. Y. 195, 55 N. E. 927; *People v. Feitner*, 92 App. Div. 518, 87 N. Y. S. 304.

²⁵⁰ *P. v. Norton*, 53 App. Div. 557, 65 N. Y. S. 992; *P. v. Feitner*, 41 App. Div. 571, 58 N. Y. S. 713.

²⁵¹ *P. v. Barker*, 154 N. Y. 128, 47 N. E. 973.

²⁵² *Tax Law*, § 6.

subject to its risks, and forming part of the capital employed in it by the assent of the stockholders." ²⁵³

How far a foreign corporation may deduct its debts from its assets has been a matter of some difference of opinion. In the first case in which the matter was discussed the foreign corporation had assets at its home office sufficient to cover its liabilities; and it was held that the liabilities could not be deducted.²⁵⁴ To the extent of the facts in this case the decision is certainly sound. And if such property exists in the State of charter (or even if the corporation does not show that it has no such property) the liabilities cannot be deducted, although the State of charter allows no deduction of liabilities from assets.²⁵⁵

But in its opinion the court in the former case went beyond the facts. "We are of the opinion that this act does not contemplate the deduction of debts from the sums invested in this State by non-residents. As the person is a non-resident it is to be assumed that he will, at the place of his domicile, have all of what might be termed his equities adjusted, and that, if entitled to it anywhere, it will be at such domicile that he will claim and be allowed the right to have such deduction." The language was considered in a later case.²⁵⁶ In that case a foreign corporation had bought property, and had incurred indebtedness for the purchase price. The court held that this indebtedness should be subtracted from the value of the property held in order to arrive at the "sums invested" in the business.

"So long as the property purchased has not been paid for in full, then the amount still due upon it ought to be deducted, as not representing any sum invested by the purchaser in this state. . . .

"This treatment of the question is not in fact to be regarded

²⁵³ Patterson, J., in *P. v. Barker*, 23 App. Div. 532.

²⁵⁴ *P. v. Barker*, 141 N. Y. 118, 35 N. E. 1073, 23 L. R. A. 95.

²⁵⁵ *P. v. Barker*, 16 App. Div. 266.

²⁵⁶ *P. v. Barker*, 147 N. Y. 31, 41 N. E. 435, 29 L. R. A. 393.

in the light of a strict deduction of debts from assets. It is construing the meaning of the statute, and determining what in reality is the sum invested by a non-resident individual or corporation, under these circumstances, in the business in which he or it is engaged in this state. It is not adjusting the equities as spoken of in the *Thurber-Whyland Co. Case*, which we then held should be done at the place where the corporation was a resident. It is a different thing from ascertaining the general and gross assets of a non-resident to be found within the state, and from that sum deducting all its debts whenever and upon whatever cause incurred. The non-resident corporation investing a sum of money in this state is to be assessed for the full sum it invests here, although it may owe debts enough outside of such investment to render it insolvent. The indebtedness it has incurred in the transaction from which the purchase of the property is the result is no part of the sum it has invested in such purchase, and no assessment can be made which includes the amount of that indebtedness." ²⁵⁷

The result of these authorities leaves it uncertain how far general liabilities should be deducted from the assets of a foreign corporation which has no assets at its home office.²⁵⁸

The surplus profits are not taxable unless they exceed ten per cent. of the capital stock. "As we understand this statute, the surplus profits or reserved funds mean the accumulations of the company of moneys or property in excess of the par value of the stock issued by it; that its real estate and personal property is to be assessed at its actual value in the same manner as the other personal and real estate of the county is assessed up to the amount of the par value of the stock issued, and then the surplus profits or reserved funds that have been accumulated in addition which exceed 10 per

²⁵⁷ *Peckham, J., in P. v. Barker, supra.*

²⁵⁸ In *People v. Barker*, 17 Misc. 180, it was assumed without argument that the indebtedness of a foreign corporation arising out of acts done in the State of charter would be deducted.

cent. of its capital stock shall also be assessed at its actual value, and in the same manner. If, however, there are no surplus profits, or if the surplus does not exceed 10 per cent. of the capital stock, there is nothing to assess as surplus, and nothing from which the 10 per cent. of the capital can be deducted.”²⁵⁰

From the value of the capital stock, thus ascertained, the assessed value of the real estate is to be deducted. This real estate does not include a franchise of the corporation.²⁶⁰ The value to be deducted is the assessed value, even though the real estate be situated abroad, if there is an assessed value;²⁶¹ though of course if the real estate was not assessed at its *situs* some other method would have to be taken of finding its value, as for instance its cost.²⁶²

Though the assessed value of the real estate is the value to be subtracted, the assessors are not confined to that value in assessing the whole value of the capital stock. The real estate as an item of the capital stock should be valued by them at its real value, whatever that may be. If that be greater than the assessed value, so that after the subtraction an amount is left which really exceeds that portion of the capital stock made up of personalty, the excess is counter-balanced by the undervaluation of the real estate for separate taxation.²⁶³

§ 544. New York: State tax.

State taxation is imposed by the following provisions:

“Every corporation, joint stock company or association incorporated, organized or formed under, by or pursuant to law in this state, shall pay to the state treasurer annually, an annual tax to be computed upon the basis of the amount of

²⁵⁰ P. v. Barker, 165 N. Y. 305, 59 N. E. 137.

²⁶⁰ P. v. Comrs., 104 N. Y. 240, 10 N. E. 437.

²⁶¹ P. v. Coleman, 115 N. Y. 178, 21 N. E. 1056.

²⁶² P. v. Comrs., 104 N. Y. 240, 10 N. E. 437.

²⁶³ P. v. Barker, 144 N. Y. 94, 39 N. E. 13.

its capital stock employed within this state and upon each dollar of such amount, at the rate of one-quarter of a mill for each one per centum of dividends made and declared upon its capital stock during each year ending with the thirty-first day of October, if the dividends amount to six or more than six per centum upon the par value of such capital stock. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, the tax shall be at the rate of one and one-half mills upon such portion of the capital stock at par as the amount of capital employed within this state bears to the entire capital of the corporation. If no dividend is made or declared, the tax shall be at the rate of one and one-half mills upon each dollar of the appraised capital employed within this state. If such corporation, joint stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six, or more than six per centum, upon the par value thereof, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto a tax shall be charged at the rate of one and one-half mills upon every dollar of the valuation made in accordance with the provisions of this act of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum.²⁸⁴ Every corporation, joint stock company or association organized, incorporated or formed under the laws of any other state or country, shall pay a like tax for the privilege of exercising its corporate

²⁸⁴ By 1901, ch. 558, street surface and elevated railroads and steam railroads were taxed at a lower rate.

franchises or carrying on its business in such corporate or organized capacity in this state, to be computed upon the basis of the capital employed by it within this state.”²⁶⁵

“In case no dividend has been declared, by a corporation, association or joint stock company liable to pay a tax under section one hundred and eighty-two of this chapter, the treasurer or secretary of the company shall, under oath, between the first and fifteenth day of November in each year, estimate and appraise the capital stock of such company upon which no dividend has been declared, or upon which the dividend amounted to less than six per centum at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and shall forward the same to the comptroller with the report provided for in the last section. If the comptroller is not satisfied with the valuation so made and returned he is authorized and empowered to make a valuation thereof, and settle an account upon the valuation so made by him, and the taxes, penalties and interest to be paid by the state.”²⁶⁶

The tax hereby created is a franchise tax.²⁶⁷ The value of the stock, where there are no dividends declared, is the actual value as measured by the market value of the shares.²⁶⁸

The State tax is not a tax on property, but on a privilege; when laid upon a domestic corporation it is a tax upon the privilege of acting as a corporation;²⁶⁹ when laid upon a foreign corporation it is a tax upon the privilege of doing business within the State.²⁷⁰ It is neither a tax upon the property employed in business nor upon the property acquired by the business. It is in this respect entirely different from the local tax on the capital stock as property. The fact that a portion of the capital of the corporation is invested in non-taxable

²⁶⁵ N. Y. 1896, ch. 908, § 182.

²⁶⁶ *Ibid.* § 190.

²⁶⁷ *Peo. v. Albany Ins. Co.*, 92 N. Y. 458.

²⁶⁸ *Peo. v. Morgan*, 47 App. Div. 126, 62 N. Y. S. 191.

²⁶⁹ *P. v. Home Ins. Co.*, 92 N. Y. 328.

²⁷⁰ *P. v. Equitable Trust Co.*, 96 N. Y. 387.

property, such as government bonds, is therefore immaterial; the tax, not being laid upon the bonds, is valid to the full extent.²⁷¹ For the same reason the tax is valid though the business of the corporation is foreign or interstate commerce, whether the corporation is foreign or domestic.²⁷²

This distinction appears to have been lost sight of in a case where the court, on the analogy of the decisions holding that a corporation cannot be taxed locally on patent rights, held that the value of copyrights owned by the corporation must be deducted from the value of the capital stock before imposing the State tax.²⁷³ The case would seem to have been wrongly decided on this point, and to be quite inconsistent with the cases already cited.

When no dividend or dividends less than six per cent. are paid, the basis of the tax is the value of the stock. This value, in spite of the language in section 182 of the act, is to be taken as provided in section 190 as the actual, not the par value of the stock.²⁷⁴ The income is in that case unimportant, except for its bearing on the value of the stock.²⁷⁵ The stock is the capital of the corporation, not the share stock of individual members.²⁷⁶

In this valuation the good will and franchises of the corporation are included,²⁷⁷ this again being different from the rule which applies to local taxation. "The actual value of the capital stock of such a corporation is the value of its assets,

²⁷¹ *P. v. Home Ins. Co.*, 92 N. Y. 328, affirmed on an appeal in which the constitutionality of the tax was brought in question: *Home Ins. Co. v. New York* 134 U. S. 594, 33 L. ed. 1025.

²⁷² *P. v. Roberts*, 158 N. Y. 162, 52 N. E. 1102; *P. v. Roberts*, 158 N. Y. 168, 52 N. E. 1104. And see *P. v. Wemple*, 131 N. Y. 1, 33 N. E. 720; *P. v. Wemple*, 131 N. Y. 64, 29 N. E. 1002, 27 A. S. R. 542.

²⁷³ *P. v. Roberts*, 159 N. Y. 70, 53 N. E. 685, 45 L. R. A. 126.

²⁷⁴ *P. v. Roberts*, 154 N. Y. 101, 47 N. E. 980; *P. v. Roberts*, 168 N. Y. 14, 60 N. E. 1043; *P. v. Knight*, 173 N. Y. 255, 65 N. E. 1102; *P. v. Morgan*, 47 App. Div. 126, 62 N. Y. S. 191.

²⁷⁵ *P. v. Roberts*, 91 Hun, 146, 36 N. Y. S. 277.

²⁷⁶ *People v. Morgan*, 178 N. Y. 433, 70 N. E. 967.

²⁷⁷ *P. v. Roberts*, 154 N. Y. 101, 47 N. E. 980.

after deducting its liabilities, and adding to the sum then remaining the value of the good will of the business, including its right to conduct it under its franchise.”²⁷⁸

When no dividend of six per cent. or over is paid, it is necessary to determine the proportion of the capital stock employed in business within the State; if no part of the capital is employed within the State, even a domestic corporation not paying the dividends mentioned, is not liable to the franchise tax.²⁷⁹ The amount of capital to be taken as employed in business during the year is the average amount so employed, not the greatest amount.²⁸⁰

Capital employed in business is to be distinguished from surplus invested, but not used in the actual business of the company. Thus an investment of a mining corporation's profits, accumulated by passing dividends, in stock of a railroad to facilitate working the mines, is not to be considered as capital, for the purpose of taxation.²⁸¹ And so real estate within the State, purchased as an investment with the surplus earnings of the corporation, and not occupied by it for business purposes, is not capital employed in the business.²⁸² “Capital, to be employed within this State, must be actively employed, and a nominal employment or an investment of the same was not intended by the statute.” And the same is true of an investment in city bonds bearing interest. “We see no distinction between an investment in real estate paying a general and local tax and an investment in non-taxable municipal bonds. The tax law in no way refers to the kind of property in which the capital of the corporation is to be employed. If the capital is employed within this state, it must be included in the basis of computation. If it is not employed within this state, it must not be included in the

²⁷⁸ Martin, J., in *P. v. Roberts*, *supra*.

²⁷⁹ *P. v. Campbell*, 66 Hun, 146, 21 N. Y. S. 7.

²⁸⁰ *P. v. Morgan*, 57 App. Div. 335, 68 N. Y. S. 21.

²⁸¹ *P. v. Roberts*, 156 N. Y. 585, 51 N. E. 293.

²⁸² *P. v. Wemple*, 150 N. Y. 46, 44 N. E. 787; *P. v. Roberts*, 66 App. Div. 157, 72 N. Y. S. 950.

basis of computation. Whether the investment is in real estate or personal property cannot affect the question, except so far as it may aid in determining whether it is employed or not.”²⁸³ The question therefore is not whether the investment is in property necessary for the business of the company or in income-bearing securities; but whether it represents capital or surplus. And in the absence of evidence that it is surplus, it will be regarded as capital. “If these bonds were purchased with capital, as distinguished from surplus, they furnish a proper basis for taxation;²⁸⁴ and so, if they were bought with surplus, they are not a basis for taxation.”²⁸⁵ The comptroller has included these bonds in the list of assets that represent capital for the purpose of franchise taxation. There is nothing to show that they were bought with surplus. The relator does, it is true, claim that they were bought with surplus, but his contention is founded upon nothing more than an argument to the effect, that, because it has more assets than share stock, there must be a presumption that capital would be invested in properties relating to its business, while surplus would naturally be invested in safe interest-bearing securities. We can indulge in no such presumption, but, if we could, it would be of no avail as against the Comptroller’s decision, which should not be disturbed unless clearly erroneous.²⁸⁶ . . . Stocks of other corporations held by a corporation sought to be taxed upon its franchise fall within the same rules that govern the bonds above referred to.”²⁸⁷

In a late case in the Appellate Division it was held that the liabilities of the corporation should be deducted from its assets, in order to find the amount of capital stock employed in the State to determine the basis of the franchise tax; and where part of the capital is employed outside the State, a portion

²⁸³ *P. v. Roberts*, 66 App. Div. 157, 72 N. Y. S. 950; but see *P. v. Campbell*, 88 Hun, 544, 34 N. Y. S. 801.

²⁸⁴ Citing *People v. Campbell*, 138 N. Y. 543, 34 N. E. 370, 20 L. R. A. 453.

²⁸⁵ Citing *People v. Roberts*, 156 N. Y. 585, 51 N. E. 293.

²⁸⁶ Citing *People v. Wemple*, 129 N. Y. 558, 29 N. E. 812.

²⁸⁷ *Werner, J.*, in *People v. Morgan*, 178 N. Y. 433, 70 N. E. 967.

of its total liabilities should be deducted equal to the proportion of its capital employed within the State.²⁸⁸ The authorities on which the opinion is based were all cases involving local taxation; and it is perhaps an error to deduct liabilities in determining the amount of the franchise tax.

A corporation which has an office in New York, but is engaged only in the business of obtaining in England orders for goods manufactured by another corporation, merely receiving at its New York office reports from its agents and giving them instructions, is not engaged in business in New York.²⁸⁹

Where a domestic corporation owned real estate and deposited bonds abroad to secure creditors in the other States, though such real estate and bonds were employed in the business they were not employed in the domestic State but in the place where they were situated.²⁹⁰ So stock in other corporations which do business outside the State, owned by a domestic corporation, is not capital employed within the State.²⁹¹ And so if the business carried on in New York is merely the collection and distribution of dividends on the stock of another foreign corporation, the corporation, though carrying a large balance at all times in a New York bank, cannot be said to be employing capital within the state and is not taxable.²⁹² But this must be confined to cases where no real business was done except by the corporation whose stock and bonds were held; the holding of the stock being not business, but a mere investment. If the holding company made a business in New York of buying and selling securities, it is doing in New York a business quite independent of that of the companies or individuals whose stock and bonds are thus held. Thus a foreign corporation whose business consists in loaning money on bonds and mortgages upon property in western

²⁸⁸ *People v. Miller*, 90 App. Div. 599, 85 N. Y. S. 522.

²⁸⁹ *People v. Miller*, 90 App. Div. 545, 85 N. Y. S. 849.

²⁹⁰ *P. v. Campbell*, 74 Hun, 101, 26 N. Y. S. 462.

²⁹¹ *P. v. Wemple*, 148 N. Y. 690, 43 N. E. 176; *P. v. Knight*, 173 N. Y. 255, 65 N. E. 1102.

²⁹² *People v. Roberts*, 154 N. Y. 1, 47 N. E. 974.

States, which has a place of business and a president and treasurer located in the State of New York and pays for office rental, and also for salaries and services in the State of New York, and has been licensed by its banking department, and which has a certain stock of western securities in the State of New York which are sold and replenished in the course of its business, the proceeds of which are deposited in a New York bank and are subsequently sent West to be lent again in the same way, is doing in New York the business of dealing in mortgages, and has capital there employed;²⁹³ and the same thing is true of a foreign corporation, engaged in the business of dealing in stocks and bonds of other corporations, which dealt in New York and there kept the securities it owned and its bank account, with which it purchased its securities.²⁹⁴ In distinguishing other cases, the court said:

"The relator insists, however, that substantially the same question as is presented in this case for determination was before this court upon a proceeding to review a like tax imposed by the Comptroller upon the relator for a former year,²⁹⁵ and that his action in so imposing it was reversed by this court upon the authority of *People v. Roberts*.²⁹⁶ . . . The case in the Court of Appeals, upon the authority of which the former case was reversed, was decided by a divided court, three of the judges having dissented from the prevailing opinions, and can hardly be regarded as a controlling authority for a case so unlike it as the one here. There the purpose for which the corporation was organized was to invest its capital in the stock and bonds of an Illinois corporation, and its whole capital was so invested, and the entire business transacted in this state was to receive and distribute the dividends or income derived from such investment."

A corporation which sends an agent into the State to obtain

²⁹³ *People v. Roberts*, 25 App. Div. 16.

²⁹⁴ *People v. Miller*, 90 App. Div. 560, 86 N. Y. S. 386.

²⁹⁵ *People v. Roberts*, 32 App. Div. 631, 53 N. Y. S. 1112.

²⁹⁶ 154 N. Y. 1, 47 N. E. 974.

orders, which are then filled from the principal office of the corporation, outside the State, is not so doing business within the State as to be subject to the franchise tax; even though it delivers to the purchasers within the State,²⁹⁷ or keeps samples at the agent's office within the State;²⁹⁸ nor is it doing business within the State if it consigns goods for sale to a broker there.²⁹⁹ If, however, it employs a regular selling agent, who keeps an office for sale, and a stock of goods there, and a number of clerks engaged in the sale of the goods, the corporation is doing business within the State.³⁰⁰

It has been claimed that the good will and franchises of a foreign corporation cannot be part of the capital employed within the State; but this contention is unsound. The good will inheres in the business, and exists where the business is carried on; and therefore such good will as is connected with the business done within the State is capital employed in business within the State, and is to be included in the valuation of such business.³⁰¹ "All its property and business is in this State. The object of its incorporation was to acquire and continue the business of the firm of Journeay & Burnham, of the city of Brooklyn, N. Y. Under the circumstances, the value of the good will and name of the business was part of relator's capital stock employed in this State."³⁰² The question was fully discussed by Vann, J.³⁰³

"The good will of the relator, aside from that purchased of Mr. Johnson, is the result of exercising its corporate franchises and carrying on its business in this state, and is inseparable from that business. It is the product of an investment of capital in this state, and the exercise here of the privilege for which the tax was laid. To hold that it was not

²⁹⁷ *People v. Roberts*, 22 App. Div. 282, 47 N. Y. S. 949.

²⁹⁸ *People v. Roberts*, 27 App. Div. 455, 50 N. Y. S. 355.

²⁹⁹ *People v. Roberts*, 25 App. Div. 13, 49 N. Y. S. 10.

³⁰⁰ *People v. Roberts*, 91 Hun, 158, 36 N. Y. S. 368.

³⁰¹ *P. v. Roberts*, 159 N. Y. 70, 53 N. E. 685; *P. v. Roberts*, 37 App. Div. 1.

³⁰² *Putnam, J.*, in *P. v. Roberts*, 37 App. Div. 1, 6, 55 N. Y. S. 317.

³⁰³ *P. v. Roberts*, 159 N. Y. 70, 53 N. E. 685.

capital employed in this state, upon the ground that the domicile of the corporation is in West Virginia, where it never transacted any business nor earned any good will by fair dealing and efficient methods, would exalt form above substance. As the good will is the result of the employment of capital and an incident to an established business, it can exist for no practical purpose in the state where the relator was organized and where it never invested any capital nor did any business. The good will of the relator belongs to its old and well-established business, which is conducted wholly in this state. It is as much a part of its business as the books which it publishes. The good name of those books is a portion of it, acquired partly by purchase from the originator of the cyclopædia, who resided in this state. The value of that name has been increased by the enterprise of the relator in expending in this state over \$200,000 to enlarge and perfect the work. The value of the books, and the other tangible property used in their production, is augmented by the good will. The mere fact that good will is intangible does not take it out of the state, so far as the right of taxation is concerned, because it is inseparably attached to property which is tangible, located in this state.³⁰⁴ It exists at the place where it has a market value, which is where the relator carried on its business and earned a reputation for superior work and honorable conduct. This reputation was not built up in West Virginia, where it did no business, but in New York, where it did all its business. It could neither be sold nor used to advantage in the former state.

“If we hold that the good will of a foreign corporation is not taxable here, simply because it is intangible, although it grew up here, has a market value here and nowhere else, we place a premium on nonresident corporations by relieving them of a burden that we place upon domestic corporations.”

It would seem that capital employed any portion of the time within the State is to be included, though it is sometimes

³⁰⁴ *In re Houdayer's Estate*, 150 N. Y. 37, 44 N. E. 718, 34 L. R. A. 235, 55 A. S. R. 642.

employed outside the State. Thus where a domestic railroad company owned cars which were sometimes within and sometimes outside the State, it was held by a majority of the court that the whole value of the cars was capital employed within the State.³⁰⁵ Haight, J., said: "True, the cars are transferred onto other roads, and are run outside of the state, for the purpose of facilitating the transportation of persons and freight without change of cars or of breaking bulk; but the use of the cars outside of the state is but temporary, for they are returned as soon as reloaded, and are again used in the transportation of persons and property within this state. It seems to me, therefore, that, under a fair and reasonable construction of the statute, this item should have been included as capital employed within this state."³⁰⁶

This decision is by its terms applied only to the case of a domestic corporation. How the court will deal with the case of a foreign corporation remains to be seen; but there would seem to be no tenable ground for distinction.

It is clear that rolling stock permanently employed outside the State cannot form part of the capital invested in business within the State.³⁰⁷

§ 545. North Carolina.

Both the State and local taxing districts impose an *ad*

³⁰⁵ P. v. Knight, 173 N. Y. 255, 65 N. E. 1102.

³⁰⁶ There was a vigorous dissent. O'Brien, J., held that it was proper to include as capital employed within the State only a part of the value of the cars, in proportion to the length of road within and outside the State. He said: "It is obvious that since the relator is a great interstate railroad, traversing the continent, a large proportion, or at least some, of its rolling stock must be always employed outside of the state. It may be that the *situs* of all the relator's property is in the state of its creation, but, as already remarked, the question is not where the *situs* is, but where the property is employed. It may be that various states through which the relator's railroad is operated impose taxes upon such part of its property as upon the basis adopted here is found to be employed in these states, respectively; so we think that the learned court below was correct in excluding this item from the estimate of the relator's property employed within this State."

³⁰⁷ P. v. Campbell, 88 Hun, 544, 34 N. Y. S. 801.

valorem tax on the property of a corporation; certain corporations pay a local license tax; and all corporations pay a franchise tax to the State.

The property tax is governed by the following provisions as to rate:

"There shall be levied and collected annually an *ad valorem* tax of twenty-one cents for State purposes, four cents for pensions, and eighteen cents for public schools—making forty-three cents on every one hundred dollars value of real and personal property in this State required to be listed in 'An Act to provide for the assessment of property and collection of taxes,' subject to exemption made by law, and no city or other municipal corporation shall have power to impose, levy or collect any greater sum on real and personal property than one per centum of the value thereof, except by special authority from the General Assembly."³⁰⁸

All exemptions from taxation contained in charters or former laws are repealed.³⁰⁹

An annual report in writing must be made by domestic corporations, showing the authorized capital stock, the number and par value of shares issued, the amount paid into the Treasury, the amount of dividends paid, and the highest, lowest and average price of shares during the year; together with an official estimate of the value of the capital stock, which may be revised by the Auditor and State Treasurer, subject to appeal.

Corporations liable to tax on capital stock shall not be required to pay any further State tax on the mortgages, bonds, or other securities owned by them in their own right. The Corporation Commission, the Treasurer and the Auditor are forbidden to divulge or make public any report of a corporation required to be made to them or either of them by this section. The auditor shall prepare and keep a record book upon which he shall enter a corporate list of all the corpora-

³⁰⁸ N. Car. Revenue Laws of 1903, § 3.

³⁰⁹ *Ibid.* § 5.

tions and banks which he has assessed for taxation, and said record shall show the assessed valuation placed upon same by him.³¹⁰

"Every corporation, joint stock association, limited partnership or company whatsoever from which a report is required under the sixth section hereof, shall be subject to and pay to the State Treasurer annually a tax as prescribed in section three upon each one hundred dollars of the actual value of its whole capital stock of all kinds, including common, special and preferred, as ascertained in the manner prescribed by law. . . . *Provided*, that for the purposes of this act, interests in limited partnerships or joint stock associations shall be deemed to be capital stock and taxable accordingly: *Provided, also*, that corporations, limited partnerships and joint stock associations, liable to tax on capital stock under this section, shall not be required to make any report or pay any further tax on mortgages, bonds, other securities and credits owned by them in their own right; but corporations, limited partnerships and joint stock associations, holding such securities as trustees, executors, administrators, guardians, or in any other manner, shall return and pay the tax imposed by this act upon all securities so held by them, as in the case of individuals. Individual stockholders in any corporation, joint stock association, limited partnership or company paying a tax on its capital stock under this section shall not be required to pay any tax on said stock or list the same."³¹¹ This tax applies to foreign corporations doing business in the State, as well as to domestic corporations.³¹²

Nothing in this act shall be construed to exempt from taxation at its real value any property situate in this State belonging to any foreign corporation.³¹³

All building and loan associations organized in North Caro-

³¹⁰ N. Car. Machinery Act of 1903, § 34.

³¹¹ N. Car. Revenue Law of 1903, § 4.

³¹² *State v. Armour Packing Co.*, (N. C.) 47 S. E. 411.

³¹³ N. Car. Machinery Act of 1903, § 36.

lina "shall list for taxation on the first Monday in June of each year the shares of stock of such association at their actual value, as shown by the books of said association. He shall deduct from such valuation the actual value of the shares upon which said association has made loans, and which have been pledged to such association as security therefor. But it is expressly provided that the secretary of each association shall show in detail, or by series on the tax list, the actual value of all shares, and also the actual value of shares upon which loans have been made, and which have been pledged to the association as security therefor. The secretary of such association shall pay to the State Treasurer by the first day of July of each year the State tax, and to the Sheriff or Tax Collector of each county in which such association is located, the county and school tax by the fifteenth day of September of each year. No other tax or assessment shall be charged or levied on said association or the shares therein." ³¹⁴

"All foreign building and loan associations doing business in this State shall list for taxation through its agent its stock held by citizens of this State, in the county, city or town where the owners of said stock reside. In listing said stock for taxation the withdrawal value as fixed by the by-laws of each company shall be furnished the list taker, and the stock shall be valued for taxation as other moneyed investments of citizens of this State. All of said taxes shall be paid by the association listing said stock." ³¹⁵

A State license tax for the privilege of carrying on business within the State is exacted as follows:

"On each and every corporation organized under the laws of this State or doing business in this State (railroads, banks, building and loan associations, insurance companies, telegraph companies, express companies and telephone companies excepted), an annual franchise tax in proportion to the amount of its capital stock, according to the following graduated scale,

³¹⁴ *Ibid.* § 35.

³¹⁵ *Ibid.* § 39.

to-wit: On corporations having a capital stock paid in or subscribed of twenty-five thousand dollars or less, five dollars; over twenty-five thousand dollars and not exceeding fifty thousand dollars, ten dollars; over fifty thousand dollars and not exceeding one hundred thousand dollars, twenty-five dollars; over one hundred thousand dollars and not exceeding two hundred and fifty thousand dollars, fifty dollars; over two hundred and fifty thousand dollars and not exceeding five hundred thousand dollars, one hundred dollars; over five hundred thousand dollars and not exceeding one million dollars, two hundred dollars; over one million dollars, five hundred dollars. In addition to the penalties otherwise provided in this act, the failure for three consecutive years to pay the franchise tax by this section shall cause a forfeiture of the charter of such defaulting corporation, and its charter in that event shall be and the same is hereby repealed. If such defaulting corporation is a foreign corporation, its permission to do business in this State shall be revoked. No county, city or town shall have the power to levy any franchise tax under this section. *Provided*, that the payment of the tax imposed by this section shall not exempt any corporation from the payment of the license taxes levied under Schedule B of this act; *Provided, further*, that the tax provided for under this section shall be payable to the State Treasurer." ²¹⁶

A license fee on mercantile corporations for the privilege of doing business in the State, is thus assessed:

"Each vender of or dealer in goods, wares, merchandise, commodities or effects of whatsoever kind or nature, either retail or wholesale, except such business or trades as are specially mentioned by name in other sections of this schedule and which have a fixed annual license fee levied upon them, shall pay annually on the whole volume of gross sales according to the following schedule:

On \$50,000 or less, 40 cents on each \$1,000, or fractional

²¹⁶ N. Car. Revenue Act of 1903, § 81.

part thereof; on the excess over \$50,000 to \$75,000, 30 cents on each \$1,000, or fractional part thereof; on the excess over \$75,000 to \$125,000, 25 cents on each \$1,000, or fractional part thereof; on the excess over \$125,000, 20 cents on each \$1,000, or fractional part thereof.

Every person mentioned in this section shall within ten days after the first day of January in each year, deliver to the Clerk of the Board of County Commissioners a sworn statement of the amount of his gross sales for the twelve months or any part of said time prior thereto as per schedule made above, stating within which class his sales come. . . . It shall be the duty of the Sheriff to collect from every person on said list furnished him by the clerk as aforesaid the taxes embraced therein.

The Board of County Commissioners shall have power to require the merchant or dealer making his statement to submit his books for examination to them.”³¹⁷

§ 546. North Dakota.

There is no franchise tax. The real and personal property of corporations is taxed like that of individuals, including the property of foreign corporations. “All real and personal property in this state, and all personal property of persons or of corporations residing or doing business therein, and the property of corporations now existing or hereafter created . . . is subject to taxation, and such property or the value thereof shall be entered into the list of taxable property.”³¹⁸ “Personal property includes . . . all stock in turnpikes, railroads, canals and other corporations, except national banks out of the State, owned by the inhabitants of this State; all personal estate of moneyed corporations, whether the owner resides in or out of the State . . . all shares of stock in any bank organized or that may be organized under any law of the United States or of this State; and all improvements made by persons upon lands . . . and the improvements of any other

³¹⁷ *Ibid.* § 67.

³¹⁸ N. Dak. 1897, ch. 126, § 2.

corporation whose property is not subject to the same mode and rule of taxation as other property." ³¹⁹

The personal property of a corporation is assessed, and also its capital stock. The statement made by the corporation to the assessor shows the amount of authorized and paid-up capital stock, the number and market value of the shares, the amount of indebtedness (excluding indebtedness for current expenses), and the value of its real and personal property. The sum of the value of its real and personal property and of its indebtedness is subtracted from the total value of its shares; and the remainder is taxed as "stocks." ³²⁰

§ 547. Ohio.

The corporation pays a tax upon its property, and also a franchise tax.

The Constitution requires that the corporation shall be taxed upon its property.

"The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals." ³²¹ This includes foreign intangible property of Ohio corporations. ³²² This property cannot be taxed doubly. ³²³

All property whether real or personal in this State, and whether belonging to individuals or corporations, and all moneys, credits, investments in bonds, stocks, or otherwise, of persons residing in this State, shall be subject to taxation, except only such as may be expressly exempted therefrom. ³²⁴

"The president, secretary, and principal accounting officer of

³¹⁹ *Ibid.* § 4.

³²⁰ *Ibid.* § 25. On the deduction of indebtedness, see the corresponding provision in Minnesota, held unconstitutional; *ante*, § 533.

³²¹ Oh. Const. Art. 13, § 4.

³²² Oh. Rev. Stat. § 2731.

³²³ Oh. Const. Art. 12, § 2.

³²⁴ Oh. Rev. Stat. § 2731. Exemptions of institutions of public charity in the State cannot be taken advantage of by foreign charitable corporations. *Humphreys v. State*, 70 N. E. 957.

every canal or slackwater navigation company, turnpike company, plank road company, bridge company, insurance company, telegraph company, or other joint stock company, except banking or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, whether incorporated by any law of this state or not, shall list for taxation, verified by the oath of the person so listing, all the personal property, which shall be held to include all such real estate as is necessary to the daily operations of the company, moneys and credits of such company or corporation within the state, at the actual value in money, in the manner following: In all cases return shall be made to the several auditors of the respective counties where such property may be situated, together with a statement of the amount of said property which is situated in each township, village, city, or ward therein. The value of all movable property shall be added to the stationary and fixed property and real estate, and apportioned to such wards, cities, villages or townships, pro rata, in proportion to the value of the real estate and fixed property in said ward, city, village or township, and all property so listed shall be subject to and pay the same taxes as other property listed in such ward, city, village, or township.”³²⁵

Besides this property tax, a franchise tax is exacted by the State from domestic corporations.

Every domestic corporation for profit shall annually report to the Secretary of State, among other things, the amount of its capital stock authorized and issued. The corporation shall pay annually a fee of one-tenth of one per cent. upon the subscribed or issued and outstanding capital stock, not less than ten dollars.³²⁶

This is not a tax on property, and the exaction of it in addition to the regular property tax is therefore not double taxation.³²⁷

³²⁵ *Ibid.* § 2744.

³²⁶ Oh. 1902, p. 124, § 1.

³²⁷ *Southern Gum Co. v. Laylin*, 66 Oh. St. 578, 64 N. E. 564.

" A domestic corporation is given life and continued existence by the state, and this life and existence, with their accompanying powers, constitute the franchise; and, this franchise being valuable and given by the State, the State may impose a franchise tax thereon to the amount of the value thus conferred and continued, the same as, in taxation by assessment, the public first bestows a special benefit upon the property, and then takes back, by way of assessment, a part or all it has thus conferred.³²⁸ A foreign corporation can do business in this State only upon such terms and conditions as the State may impose, and therefore a franchise tax may be imposed upon a foreign corporation for the privilege of doing business in this State. It therefore follows that a franchise tax may be imposed on both domestic and foreign corporations alike. An excise tax may also be imposed on corporations to compensate the State for the additional burden sustained by the State and the people by reason of property being held by artificial bodies, the persons comprising such bodies being exempt from liability to a great extent for the debts thereof. This ground of excise taxation was recognized in *Adler v. Whitbeck*,³²⁹ and was there applied to the liquor traffic, because that business was there shown to impose additional burdens upon the State. So the aggregation of capital by corporations imposes additional burdens, and requires regulations not applicable to individuals.

" It is urged, and truly, that the capital paid in by the stockholders becomes invested in property, and that taxes are paid thereon the same as individuals pay upon their property. Then it is urged, secondly, that this exaction of one-tenth of 1 per cent. on the subscribed or issued and outstanding capital stock is an additional tax on the same property or capital, and that thereby double taxation results. But this second proposition is not true, because the exaction of one-tenth of 1 per cent. is not a property tax on property owned by the

³²⁸ *Walsh v. Barron*, 61 Oh. St. 15, 55 N. E. 164, 76 A. S. R. 354.

³²⁹ 44 Oh. St. 539, 9 N. E. 672.

corporation, but is an excise tax, the amount of which is fixed and measured by the amount of subscribed or issued and outstanding capital stock. To constitute double taxation, both taxes must be property taxes, and both on the same property. Here one tax is a property tax, and the other an excise or franchise tax, and therefore there is no double taxation. The limitation in section 4 of article 13 of the constitution, which prohibits double taxation of the property of corporations, applies only to taxation on property, and not to taxation of privileges or franchises. . . .

"The stock of a corporation is not its property, and is not owned by it, but by the several stockholders. It owes, and not owns, the stock. The stock is a liability of the corporation, and not an asset; and, being a liability, it cannot be taxed, because in property taxation the tax must be upon the true value in money, and a liability can have no such value. So that this exaction of one-tenth of 1 per cent. is not a tax against the corporation on stock owned by it, but is a franchise tax, the amount of which is fixed and graded by the amount of subscribed or issued and outstanding capital stock." ³³⁰

Every foreign corporation for profit doing business in Ohio and owning or using a part or all of its capital or plant in the State, and subject to compliance with § 148c of the Revised Statutes, shall in addition to the statements required by § 148c and § 148d of the Revised Statutes make a similar report annually, containing the amount of capital stock authorized and issued, the nature and place of business both within Ohio and outside, and the value of its property owned and used both within and outside Ohio. The Secretary of State shall determine the proportion of the authorized capital stock represented by property owned and used and business transacted in Ohio, and shall collect from the corporation for the privilege of exercising its franchises in Ohio, annually one-tenth of one

³³⁰ Burket, J., in *Southern Gum Co. v. Laylin*, *supra*.

per cent. upon such proportions, being not less than ten dollars.³³¹ This obligation continues until the corporation files a certificate that it has retired from business.³³² Certain public service and insurance companies are not subject to this provision.³³³

This statute has been held constitutional.³³⁴

§ 548. Oklahoma.

There is no franchise tax. The property tax is the same as that of individuals. Taxable property includes "all moneys, notes, credits or investments in bonds or stocks owned by joint stock companies or otherwise, of persons residing in this Territory, the property of corporations now existing or hereafter created, and the property of all banks."³³⁵ "Depreciated bank notes and depreciated stocks or shares in corporations or companies may be listed at their current value and rate; credits shall be listed at such sums as the person listing them believes will be received or can be collected."³³⁶

§ 549. Oregon.

Corporations both domestic and foreign pay a franchise tax, and a tax on property.

Personal property, in the tax laws, includes "stocks or shares in all incorporated companies, and such portion of the capital of incorporated companies liable to taxation on their capital as shall not be invested in real estate."³³⁷ Real estate is taxed where it lies, like the real estate of individuals.³³⁸ Merchandise kept for sale and capital, stock and machinery for manufacture or other business within the State owned by a

³³¹ Oh. L. 1902, p. 124, § 2.

³³² *Ibid.* § 8.

³³³ *Ibid.* § 7.

³³⁴ Southern Gum Co. v. Laylin, 66 Oh. S. 578, 64 N. E. 564.

³³⁵ Okl. Stat. § 5577.

³³⁶ *Ibid.* § 5596.

³³⁷ Or. Misc. L. § 2731.

³³⁸ *Ibid.* § 2739.

domestic or foreign corporation is taxable where it is.³³⁹ The personal property of a corporation is assessed at its principal place of business.³⁴⁰

A franchise tax is imposed as follows:

“Every corporation organized or formed under, by, or pursuant to the laws of this State, whether now existing or hereafter created, and every foreign corporation, joint stock company, or association, now doing business in this State, or that may hereafter do business in this State, except fire, marine, fire and marine, life, accident, life and accident, plate glass and steam-boiler insurance companies, and surety companies, shall, during the month of June of each year, and on or before the first day of July of each year, furnish to the Secretary of State, upon blanks to be supplied by him, a correct statement, sworn to by one of the officers of such corporation, or the managing agent or authorized attorney in fact in this State of any foreign corporation, joint stock company, or association, before an officer duly authorized to administer oaths, setting forth the name of the corporation, joint stock company, or association, the location of its principal office, the names of the president, secretary, and treasurer, with the post office address of each, date of the annual election of directors and officers of such corporation, joint stock company, or association, the amount of authorized capital stock, the number of shares and par value of each share, the amount of capital stock subscribed, the amount of capital stock issued, and the amount of capital stock paid up. Every foreign corporation, joint stock company, or association shall include in such statement the names and post office addresses of its managing agent and attorneys in fact in this state. Every such corporation, joint stock company, or association, foreign as well as domestic, shall pay an annual license fee in proportion to the amount of its authorized capital stock as follows, to wit: If such capital stock shall not exceed \$5,000, an annual license

³³⁹ *Ibid.* § 2742; Or. 1901, p. 153.

³⁴⁰ Or. Misc. L. § 2744.

fee of \$10; if such capital stock shall exceed \$5,000 and shall not exceed \$10,000, an annual license fee of \$15; if such capital stock shall exceed \$10,000 and shall not exceed \$25,000, an annual license fee of \$20; if such capital stock shall exceed \$25,000 and shall not exceed \$50,000, an annual license fee of \$30; if such capital stock shall exceed \$50,000 and shall not exceed \$100,000, an annual [license] fee of \$50; if such capital stock shall exceed \$100,000 and shall not exceed \$250,000, an annual [license] fee of \$70; if such capital stock shall exceed \$250,000 and shall not exceed \$500,000, an annual license fee of \$100; if such capital stock shall exceed \$500,000 and shall not exceed \$1,000,000, an annual license fee of \$125; if such capital stock shall exceed \$1,000,000 and shall not exceed \$2,000,000, an annual license fee of \$175; if such capital stock shall exceed \$2,000,000, an annual license fee of \$200. The amount of the authorized capital stock of every corporation, joint stock company, or association shall be determined by its articles of incorporation, or amendments or supplementary articles of incorporation, charter, declaration, report, or statement filed with the Secretary of State, as in this act provided. . . . The annual license fee required by this section shall be paid in advance for the fiscal year beginning July 1st of each year, and in case of new corporations formed or entering the State during the fiscal year, the first year's fee shall be proportionate to such fraction of a year." ³⁴¹

§ 550. Pennsylvania: general principles.

A corporation in Pennsylvania pays taxes both locally and to the State.

The local taxation of a corporation is like that of an individual, and includes taxes on tangible property. Public service companies however are, not by statute but by judicial decision, exempt from local taxation on property used in their business, except that by statute the real estate of railroads is

³⁴¹ Or. 1903, p. 43, § 5.

subject to local taxation in Philadelphia and Pittsburgh. This class of corporations includes railroad, canal and telegraph companies, natural and artificial gas companies, water companies, electric light companies, street railway and traction companies, etc.³⁴²

The so-called "personal property tax" is a State tax, but is assessed and collected locally. By the provisions of the statute, a tax of four mills on each dollar is paid on mortgages, bonds, shares of stock, and other debts owned by the person taxed, except shares of stock in corporations which pay the capital stock tax. But corporations paying the capital stock tax are exempted from the payment of the "personal property tax."³⁴³

§ 551. Pennsylvania: tax on capital stock.

The ordinary tax imposed by the State upon corporations is that upon the capital stock. By the provisions of the Act, the officers of every corporation incorporated under any law of Pennsylvania, and of every foreign corporation doing business in and liable to taxation within the Commonwealth, except banks and insurance companies, shall make a report, stating the amount of authorized and paid-in capital, the number and paid-in value of shares, gross and net earnings, surplus and dividends, and average price of stock during the year; with an estimate of the value of the capital stock, not less than the average price for which the stock has sold, and not less than the value indicated by the net earnings. The Auditor General and the State Treasurer may revise this valuation. Upon this valuation the corporation shall pay an annual tax at the rate of five mills upon each dollar. Such corporations shall not be required to pay any further tax upon mortgages, bonds, and other securities owned by them in their own right.

The provisions of this section shall not apply to the capital

³⁴² Eastman, Private Corporations in Pennsylvania, § 655.

³⁴³ Pa. P. L. 1889, p. 420, §§ 1, 2.

stock of manufacturing companies which is actually used in manufacture within the State (except brewing and distilling companies, and such as exercise the right of eminent domain).³⁴⁴

The tax on the capital stock is a tax on property, including its franchises.³⁴⁵ The question of the actual value in cash of the capital stock is a question of fact, which must be determined by considering the value of defendant's tangible property and assets of every kind, including its bonds, mortgages, and moneys at interest, and its franchises and privileges, and the amount of the incumbrances on its property and franchises is also a relevant fact to be considered, but it is not to be specifically deducted from the valuation so ascertained and determined.³⁴⁶

The assessed value of the real and personal property is one element to be considered, but only one. The indebtedness, as has been seen, was for consideration; "also the earnings, net and gross, the franchises, and all the facts tending to establish the actual value of the capital stock."³⁴⁷

In the Capital Stock Cases³⁴⁸ three judges of the Supreme Court dissented from the opinion that the tax was upon the property of the corporation. "It is to be taxed at its 'actual value in cash, not less however than the average price which said stock sold for during said year,' etc. The officers of the corporation concerned are required to make sworn returns under 17 specific heads, all of which tend to show the value of the stock as such, and not a single one of which refers directly or indirectly to the value of the property which such stock represents. The value of the capital stock in the hands of the shareholders is the value of their resulting interest in the property of the corporation subject to its debts and incum-

³⁴⁴ Pa. P. L. 1893, p. 353, § 1.

³⁴⁵ *Com. v. Standard Oil Co.*, 101 Pa. 119; *Com. v. New York, P. & O. R. R.*, 188 Pa. 169, 41 Atl. 594, and cases cited.

³⁴⁶ *Com. v. New York, P. & O. R. R.*, 188 Pa. 169, 41 Atl. 594.

³⁴⁷ *Com. v. Manor Gas Coal Co.*, 188 Pa. 195, 41 Atl. 605.

³⁴⁸ *Com. v. New York, P. & O. R. R.*, 188 Pa. 169, 41 Atl. 594.

branches, in view of the uses to which it may be put under its corporate franchises, etc.; and the value of such resulting interest is the true subject of tax under the statute."

Since the tax is upon property, it can be imposed only upon such property as is within the jurisdiction of the State; and therefore if any portion of the capital stock is invested in patent rights the value of these must be deducted before taxing the stock. "Being upon the capital stock, it is a tax upon the company's property and assets, and is therefore upon the patent rights themselves, whether they are original patents or assignments or grants or licenses. They must be considered as property of some kind, although the right is intangible, and is merely 'a property in notion,' to use Lord Mansfield's phrase concerning copyright.³⁴⁹ Considered, therefore, as a tax upon the right itself, we think it cannot possibly be supported, because it restrains and interferes with a right granted by congress in the exercise of power exclusively committed to the government of the United States by the Federal constitution."³⁵⁰

For the same reason, since double taxation will not be presumed, when the capital stock is invested in the stock of other domestic corporations (which therefore is exempt from direct taxation in the hands of the owner) the value of such stock will be deducted and the corporation taxed on the balance only.³⁵¹ On the other hand, since this is a State tax the value of real estate already taxed locally is not to be deducted. It is not obnoxious double taxation, since the real estate pays taxes once only to the State, and once for local purposes.³⁵²

Where a corporation is carrying on business not only in Pennsylvania, but also in another State, the whole capital stock is not taxed in Pennsylvania, but only a proper pro-

³⁴⁹ In *Miller v. Taylor*, 4 Burrow, 2396. See, also, *Reh fuss v. Moore*, 134 Pa. 462, 19 Atl. 756, 7 L. R. A. 663.

³⁵⁰ *Com. v. Westinghouse Elec. & Mfg. Co.*, 151 Pa. 265, 24 Atl. 1107.

³⁵¹ *Com. v. Fall Brook Coal Co.*, 156 Pa. 488, 26 Atl. 1071.

³⁵² *Com. v. Hillside Cemetery Co.*, 170 Pa. 227, 32 Atl. 404.

portion of it. This was first decided in the case of a foreign corporation doing business within the State.³⁵³ In that case it appeared that the Standard Oil Company, an Ohio corporation, owned stock in Pennsylvania corporations, sold oil through agents in the State, and had bought out and was doing business through Pennsylvania partnerships. The court held that it was doing business in Pennsylvania only in so far as it was acting through the Pennsylvania partnerships; and that it was taxable on that portion of its capital stock which was so employed.

The same rule was afterwards applied in the case of a domestic corporation.³⁵⁴ The court below found that the railroad company on which the tax had been laid owned the equipment upon 217.75 miles in the State, and the equipment upon 147.31 miles outside of the State, which was used interchangeably; and that one of its assets was a leasehold interest in a foreign corporation, the Warren Railroad, having no property in the State. On these findings the court found, as conclusions of law, that defendant was liable to taxation by the State only on that part of the whole amount of its capital stock invested in equipment, this being the proportion which the number of miles operated and equipped by it in the State bears to the whole number of miles operated and equipped, and that the stock of the Warren Railroad was wholly exempt. The Supreme Court upheld the judgment below, saying: "This is the only equitable rule which will secure to the commonwealth its fair proportion of tax, and yet enable such corporations to carry on their legitimate business; for, if a corporation having its *situs* in one state, and transacting business in every other state of this country, can be taxed in each state to the full amount of its capital stock, the result is confiscation. . . .

"It is true that the *situs* of a domestic corporation is in this state, and that for many purposes the domicil of the person,

³⁵³ Com. v. Standard Oil Co., 101 Pa. 119.

³⁵⁴ Com. v. Delaware, L. & W. R. R., 145 Pa. 96, 22 Atl. 157.

whether natural or artificial, draws to it the personal property belonging to such owner. That this is so as to such intangible property as is not the subject of taxation elsewhere, such as money at interest, may be conceded; but for the purposes of taxation tangible personal property has a *situs* wherever it may be found. . . .

"It may be that in the case of a domestic corporation the commonwealth would have the power to tax its entire capital stock, no matter where found nor how invested, and notwithstanding that the whole or the greater portion of its stock was invested in tangible property located and used in other states, and liable to taxation by the laws of those states. But the commonwealth is not a bandit with a pistol at the throat of every property owner; on the contrary, she imposes no greater burdens than the necessities of the state require, and she endeavors, at least, to impose those burdens in as equitable a manner as the wisdom of the legislature and the difficulties of the subject admit.

"We do not think it was error for the learned court below to hold that the defendant was not liable to taxation by this state on its interest in the Warren Railroad. That road is wholly outside of the state, and, whatever the defendant's interest therein may be, it is liable to taxation by the state of New Jersey. We think it comes within the principles above indicated."

In the case of a domestic corporation the amount to be deducted is the value of the fixed capital employed in business outside the State. Property mined and sent outside the State for sale is not to be deducted from the capital stock.³⁵⁵

§ 552. Pennsylvania: tax on corporate loans.

The treasurer of any corporation deducts from interest payable on any scrip, bond, or other indebtedness of the corporation due to residents of Pennsylvania, a State tax

³⁵⁵ Com. v. Delaware, L. & W. R. R., 206 Pa. 645, 56 Atl. 69.

on such debts.³⁵⁶ The amount of the tax is four mills on the dollar.³⁵⁷

"The tax is not in any sense or in any degree a tax on the corporation or its property, but on the individual citizen of the state who holds the bonds. The corporation is chargeable with it only as a collector, and by reason of default in the duty to collect.³⁵⁸ The tax, moreover, is not only not on the corporation, but it is not on the bondholders generally, but only on such as are within the taxing power of the state, This limitation is the result of the language and intent of the act, and also of the lack of jurisdiction of the state itself to tax property of nonresidents which has no actual *situs* within the state."³⁵⁹ The tax was formerly laid upon all bondholders, foreign and domestic, but was held unconstitutional as to foreign bondholders in the case of *State Tax on Foreign-Held Bonds*.³⁶⁰

The corporation must use reasonable diligence to discover which bondholders are domestic; but the State can levy the tax on such bonds only as can be proved to be held in the State.³⁶¹ This tax is constitutional; and the payment of both the bond tax and the franchise tax by the same corporation is not double taxation.³⁶² It applies only to actual loans, not for instance to trust certificates issued to shareholders of leased railroads, interest on which was in lieu of dividends and was paid by way of rental.³⁶³ Where interest on the bonds is neither earned nor paid, the company obviously cannot be called on to deduct the tax from the interest and pay it to the State.³⁶⁴

³⁵⁶ Pa. P. L. 1885, p. 193, § 4.

³⁵⁷ *Ibid.* 1891, p. 229.

³⁵⁸ *Com. v. Lehigh Val. R. R.*, 104 Pa. 89; *Com. v. Delaware Div. Canal Co.*, 123 Pa. 594, 618, 16 Atl. 584, 2 L. R. A. 798; *Com. v. Lehigh Val. R. R.*, 129 Pa. 429, 449, 18 Atl. 406, 410.

³⁵⁹ *Mitchell, J.*, in *Com. v. Lehigh Valley R. R.*, 186 Pa. 235, 40 Atl. 491.

³⁶⁰ 15 Wall. 300, 21 L. ed. 179.

³⁶¹ *Com. v. Lehigh Valley R. R.*, 186 Pa. 235, 40 Atl. 491.

³⁶² *Com. v. New York, L. E. & W. R. R.*, 150 Pa. 234, 24 Atl. 609.

³⁶³ *Com. v. Union Traction Co.*, 192 Pa. 507, 43 Atl. 1010.

³⁶⁴ *Com. v. Philadelphia, N. & N. Y. R. R.*, 13 Pa. Co. Ct. 65.

In addition to regular taxation, cities may by express authority from the legislature impose license fees for the privilege of doing business.³⁶⁵

§ 553. Rhode Island.

There is no franchise tax. Every corporation pays a tax upon its real estate where the land is situated,³⁶⁶ and also upon all machinery in a manufacturing establishment at its *situs*.³⁶⁷ Ordinary corporations which have capital stock divided into shares pay no other tax; the stockholders within the State are assessed upon the value of their shares (deducting the value of real estate and machinery), and it is thought that to tax the other property to the corporation itself would subject it to double taxation.³⁶⁸ This is not confined to manufacturing and business corporations, but extends to all corporations which have capital stock divided into shares; and non-resident stockholders, as well as the corporation itself, escape taxation.³⁶⁹

"The theory upon which the statute is based evidently is that all of the personal property of manufacturing and business corporations, other than that enumerated in section 11, is represented by its corporate stock, and that this is taxed to the individual stockholders. That a large amount of property does, in fact, escape taxation under this system, is matter of common knowledge, corporations not being required to make returns to the assessors of the amount of stock held by individual stockholders, unless specially requested so to do. Gen. Laws, R. I. c. 46, §§ 11, 12. But this is a matter where the remedy lies solely with the general assembly."³⁷⁰

³⁶⁵ Oil City v. Oil City Trust Co., 151 Pa. 454, 25 Atl. 124.

³⁶⁶ R. I. Gen. L. ch. 45, § 1.

³⁶⁷ *Ibid.* § 11.

³⁶⁸ Manufacturing Co. v. Newell, 15 R. I. 233, 2 Atl. 766; *Chemical Works v. Ray*, 19 R. I. 302, 33 Atl. 443.

³⁶⁹ *In re Newport Reading Room*, 21 R. I. 440, 44 Atl. 511.

³⁷⁰ Tillinghast, J., in *In re Newport Reading Room*, *supra*.

§ 554. South Carolina.

There is no franchise tax. A corporation pays a tax upon its capital stock or other property within the State, like an individual. This appears to include all tangible and intangible property of the corporation. "Any corporation organized under the laws of this State and owning property in another State shall not be required to return its capital for taxation in this State, but shall return such property as it owns in this State, and such proportion of the value of its other property as would be taxable in this State if owned by the individual residents thereof; and if such return be made by such corporation the shareholders therein shall not be required to return their shares for taxation."³⁷¹ "A corporation organized under the laws of the State but owning no property therein shall not be required to return its capital for taxation in this State."³⁷²

Taxable property includes all real and personal property in this State, and personal property of residents temporarily kept or used outside the State, all moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise of parties resident in this State.³⁷³

§ 555. South Dakota.

There is no franchise tax. The real and personal property of each company are listed and assessed the same as other property. The officers of corporations shall return the amount of stock authorized and paid up and the number of shares, the market or actual value of the shares, the total indebtedness (except indebtedness for current expenses), the value of its real property, and the value of its personal property. The aggregate amount of the last three items shall be deducted from the total value of the capital stock, and the remainder listed as "stock." The tangible property of the corporation,

³⁷¹ S. Car. Code, §§ 268, 304.

³⁷² *Ibid.*

³⁷³ S. Car. Code, § 260.

whether real or personal, is listed as such.³⁷⁴ The capital stock and franchises of the corporation are listed at their principal office, or if there is no principal office in the State, then where the corporation transacts business.³⁷⁵

§ 556. Tennessee.

There is no franchise tax. Ordinary corporations pay an *ad valorem* tax on their property. The real estate and tangible personalty of any corporation is assessed in the same mode and manner (and where situate) as other real estate and tangible personalty.³⁷⁶ And mercantile corporations are specifically required to pay an *ad valorem* tax on the capital invested in the business equal to that levied on other taxable property.³⁷⁷

Foreign corporations are liable to taxation, like domestic corporations, but at no higher rate.³⁷⁸ Foreign corporations having branch factories or business in this State shall only be assessed on the actual cash value of the corporate property in this State; *provided*, however, the franchise and intangible values of the corporation in this State shall be included in the valuation of the corporate property in the State.³⁷⁹

Intangible property is assessed as follows: "All corporations, foreign or domestic (except railroad, telegraph, telephone, building and loan, insurance, manufacturing and banking companies) shall pay an *ad valorem* tax upon the actual cash value of its corporate property (including its franchises, easements, incorporeal rights and privileges and all other corporate property), which said value shall not be assessed at less than the aggregate actual cash value of both its shares of stock and bonded debt; and which said value shall be computed by looking to and considering the market value, and if no market

³⁷⁴ S. Dak. Stat. § 2154. The provision for deducting the indebtedness in the similar statute of Minnesota was held unconstitutional.

³⁷⁵ S. Dak. 1901, ch. 55, § 8.

³⁷⁶ Tenn. 1901, ch. 174, § 22.

³⁷⁷ *Ibid.* § 27.

³⁷⁸ Tenn. Code, § 1998.

³⁷⁹ Tenn. 1901, ch. 174, § 24.

value, the actual value of such stock and bonds of the corporation: *provided*, however, that the assessment and taxation of said corporate property or capital stock shall be in lieu of any assessment or taxation of the shares of stock or bonds, either to the corporation or to the owners thereof; and provided also that the assessed value of the corporate realty and tangible personalty otherwise assessed, shall be deducted in making the assessment from the value of the corporate property or capital stock. . . . The value of the capital stock or corporate property, as used in this section, shall be construed as including all tangible and intangible and franchise values."³⁸⁰

For assessing corporate property an officer of corporation fills out a schedule containing:

1. Amount of stock authorized, number of shares, amount paid up and number of shares issued.
2. Market or actual value of shares.
3. Amount of outstanding bonded debt, if any, and rate of interest.
4. Market or actual value of such debt.
5. Dividends paid in the last two years, and surplus.
6. Itemized statement of all tangible personal and real property in each county, etc.
7. Itemized statement of all stocks and bonds, securities, notes, accounts, and choses in action . . . moneys on hand or on deposit, wherever situated.³⁸¹

A license fee is also exacted of mercantile corporations, which are required to pay a "privilege tax" of one-tenth of one per cent., but not less than five dollars.³⁸²

§ 557. Texas.

There is both a franchise and a property tax. Personal property, for purposes of taxation, includes "all stock in . . . corporations (except national banks) out of the State, owned

³⁸⁰ *Ibid.* § 22.

³⁸¹ *Ibid.*

³⁸² Code, § 711.

by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this State." ³⁸³ Such personal property consists of "moneys, credits, bonds or stock of companies (when the property of such company is not assessed in this State), moneys loaned or invested, annuities, franchises, royalties and all other properties." ³⁸⁴

The Constitution ³⁸⁵ provides that the legislature "may impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State . . . provided that the occupation tax levied by any county, city or town, for any year, on persons or corporations pursuing any profession or business shall not exceed one-half of the tax levied by the State for the same period on such profession or business."

Under this provision the legislature has exacted a franchise tax of every corporation, domestic and foreign, as follows:

"Each and every private domestic corporation heretofore chartered under the laws of this State shall pay to the Secretary of State an annual franchise tax of ten dollars on or before the first day of May of each year; and every such corporation which shall be hereafter chartered under the laws of this State shall also pay to the Secretary of State an annual franchise tax of ten dollars, the tax for the first year to be paid at the time such charter is filed, and the Secretary of State shall not be required or permitted to file such charter until such tax is paid, and each succeeding tax shall be paid on or before the first day of May of each year thereafter; provided, that any such corporation having an authorized capital stock of over fifty thousand dollars and less than a hundred thousand dollars, shall pay an annual franchise tax of twenty dollars; and every such corporation having an authorized capital stock of one hundred thousand dollars and less than two hundred thousand dollars,

³⁸³ Tex. Rev. Stat. Art. 5063.

³⁸⁴ *Ibid.* Art. 5067.

³⁸⁵ Art. VIII, § 1.

shall pay an annual franchise tax of thirty dollars; and every such corporation having an authorized capital stock of two hundred thousand dollars or more shall pay an annual franchise tax of fifty dollars. Each and every foreign corporation heretofore authorized to do business in this State under the laws of this State shall, on or before the first day of May of each year, and each and every such corporation which shall hereafter be so authorized to do business in this State, shall, at the time so authorized, and on or before the first day of May of each year thereafter, pay to the Secretary of State the following franchise tax: Every such corporation having an authorized capital stock of twenty-five thousand dollars or less, an annual franchise tax of twenty-five dollars; every such corporation having an authorized capital stock of more than twenty-five thousand dollars and not exceeding one hundred thousand dollars, an annual franchise tax of one hundred dollars; every such corporation having an authorized capital stock of over one hundred thousand dollars, an annual franchise tax of one hundred dollars, and in addition thereto an annual franchise tax of one dollar for every ten thousand dollars of authorized capital stock over and above one hundred thousand dollars and not exceeding one million dollars; and if such authorized capital stock exceeds one million dollars, then such corporation shall pay a still further additional tax of one dollar for every one hundred thousand dollars over and above one million dollars. Any corporation, either domestic or foreign, which shall fail to pay the tax provided for in this article at the time specified herein, shall, because of such failure, forfeit its right to do business in this State, which forfeiture shall be consummated, without judicial ascertainment, by the Secretary of State entering upon the margin of the ledger kept in his office relating to such corporations, the word, 'Forfeited,' giving the date of such forfeiture, and any corporation whose right to do business may be thus forfeited shall be denied the right to sue or defend in any of the courts of this State, and in any suit against such corporation on a cause of action arising be-

fore such forfeiture, no affirmative relief may be granted to such defendant corporation, unless its right to do business is revived as provided in Article 5243j of this act. All transportation companies now paying an annual income tax on their gross receipts in this State shall be exempted from the franchise tax above imposed.”³⁸⁶

A license tax is imposed upon mercantile corporations, graded as follows, according to the amount of annual purchases:³⁸⁷

Where the amount is not over \$2,000,	. . . \$	3 00
Over \$2,000 but not over \$5,000,	. . .	6 00
Over \$5,000 but not over \$10,000,	. . .	12 00
Over \$10,000 but not over \$15,000,	. . .	20 00
Over \$15,000 but not over \$25,000,	. . .	25 00
Over \$25,000 but not over \$50,000,	. . .	60 00
Over \$50,000 but not over \$150,000,	. . .	125 00
Over \$150,000 but not over \$250,000,	. . .	150 00
Over \$250,000 but not over \$500,000,	. . .	200 00
Over \$500,000 but not over \$750,000,	. . .	250 00
On \$750,000 or over,	. . .	300 00

§ 558. Utah.

There is no franchise tax properly so-called. The Constitution provides for the taxation of all real and personal property of corporations.³⁸⁸

Franchises are assessed as part of the property of the corporation. “All property and franchises owned by railroad, street railway, car, depot, telegraph and telephone companies in this State must be assessed by the State Board of Equalization as hereinafter provided. Other franchises if granted by the authorities of a county or city must be assessed in the county or city within which they were granted; if granted by any other authority they must be assessed in the county in

³⁸⁶ Tex. Rev. Stat. Art. 5243j.

³⁸⁷ Tex. 1897, Spec. ch. 18, § 1.

³⁸⁸ Ut. Const. Art. 13, § 10.

which the corporation, firms or persons owning or holding them have their principal place of business." ³⁸⁹

§ 559. Vermont.

Corporations are taxed in Vermont both locally and by the State, by a property and a franchise tax.

The town or other local taxing district in which real and personal property, whether of a domestic or foreign corporation, is situated taxes it. ³⁹⁰ For this purpose personal property includes credits as well as chattels; leaving "to be taxed in such corporations to the stockholders only the value of untaxed personal estate owned by the corporation, and located in other jurisdictions, and the value of the good will it has gained, which gives the stock a money value greater than the money value of the personal and real estate owned by the corporation." ³⁹¹

State taxation consists of a tax upon the property or business of certain corporations, and of a license tax upon all corporations.

"A state tax for the payment of state expenses is hereby assessed upon the property, business or corporate franchises of railroad, insurance, guaranty, express, telegraph, telephone, steamboat, car, transportation and sleeping car companies, mortgage, loan or investment companies, and other corporations, persons, associations, societies or firms, as provided in this act; and shall be payable in money to the state treasurer for the use of the state." ³⁹²

For the purpose of assessing and collecting this tax a "Commissioner of State Taxes" is appointed, ³⁹³ to whom returns are to be made and taxes paid. ³⁹⁴

The taxation of public service and insurance companies is

³⁸⁹ Ut. Rev. Stat. § 2513, amended by 1899, ch. 68.

³⁹⁰ Vt. Stat. § 374, cl. 1, 7.

³⁹¹ *Waite v. Hyde Park Lumber Co.*, 65 Vt. 103, 25 Atl. 1089.

³⁹² Vt. Stat. 1902, Act 20, § 1.

³⁹³ *Ibid.* § 2.

³⁹⁴ *Ibid.* §§ 4, 6.

separately treated. Other companies specially taxed are as follows:

“Every savings bank and savings institution incorporated by this State and doing business herein, shall pay a tax to the State which is hereby assessed at the rate of seven-tenths of one per cent. annually upon the average amount of its deposits and accumulations, after deducting therefrom the average amount not exceeding ten per cent. of its assets invested in United States government bonds, and the average amount of the assessed valuation of the real estate owned by such corporation, and also the amount, if any, of individual deposits in excess of two thousand dollars each, listed to the depositors in towns of this state wherein such depositors reside.

“Every trust company or savings bank and trust company incorporated by this State and doing business herein, shall pay a tax to the State which is hereby assessed at the rate of seven-tenths of one per cent. annually, upon the average amount of its deposits including money or securities received as trustee under order of court or otherwise, after deducting therefrom the average amount not exceeding ten per cent. of its assets invested in United States government bonds, and also the amount, if any, of individual deposits in excess of two thousand dollars each, listed to the depositors in towns of this State wherein such depositors reside.”³⁹⁵

“A tax of one per cent. upon the aggregate amount of all moneys so received to be loaned without the State, and upon the aggregate amount of bonds, mortgages, choses in action and securities of any kind negotiated as aforesaid, is hereby assessed against the person, investment company, or corporation receiving such money, or transacting said business. Such tax shall be paid to the state treasurer within thirty days from the time of making said returns and shall be in lieu of all other taxation thereon for the period of one year only.

“A person, agent, investment company or corporation may

³⁹⁵ *Ibid.* §§ 39, 40.

omit payment of the tax provided in the preceding section by giving the name and post-office address of the person or corporation from whom such money has been received, or to whom such bonds, mortgages, choses in action or securities were sold and the amount received from each such person or corporation, and informing the commissioner that the taxes are to be paid by the purchaser. When advantage is taken of this provision, the commissioner shall assess thereon a tax of one per cent. against the person or corporation of whom such agent, person, investment company or corporation received such money, or to whom said bonds, mortgages, choses in action or other securities were sold. The payment of said tax shall exempt such agent, person, investment company or corporation from all other taxes thereon, for the period of one year only.”³⁹⁶

The license tax is assessed as follows:

“Every corporation organized under the laws of any State or government other than the State of Vermont, and doing business in this State; every corporation organized under the laws of this State; and every association or joint stock company issuing shares of stock or that divides its corporate rights or property into shares, whether organized in this State or elsewhere, shall, except as hereinafter provided, pay an annual license tax to the State. Corporations organized solely for charitable, religious or educational purposes, cemetery associations, and all corporations having no capital stock or deposit as hereinafter defined, shall be exempt from the payment of the annual license tax.

“The word ‘deposit’ whenever used in this act touching any provision hereof relating to the annual license tax, is hereby declared to include all moneys or securities deposited with or held by savings banks, trust companies, savings bank and trust companies, savings institutions, building and loan associations, and all mutual or co-operative institutions for savings;

³⁹⁶ *Ibid.* §§ 44, 45.

all assets held by any corporation or association engaged in any commercial, manufacturing or other business, carried on in whole or in part upon the mutual or co-operative plan; and all assets held by insurance, surety, or guaranty companies or associations as surplus, or as necessary reserve under any contract of insurance, suretyship or guarantyship.

“Every corporation subject to the payment of the annual license tax and having capital stock or a deposit of fifty thousand dollars or less, is hereby assessed an annual license tax of ten dollars; and for each fifty thousand dollars or fractional part thereof of capital stock or deposit in excess of fifty thousand dollars, five dollars. But no annual license tax, except as herein otherwise provided, shall exceed fifty dollars.

“Such annual license tax shall cover the period of one year beginning with the first day of February, and shall be paid to the state treasurer on or before the first day of March in such year. If said annual license tax shall not have been paid on or before the first day of March the amount of such annual license tax shall be increased twenty-five per cent., providing such tax shall be paid within one month after becoming due; and fifty per cent., providing the same shall not have been paid within one month after becoming due. The commissioner of State taxes may in his discretion waive the penalties mentioned in this section, if he is satisfied that the default was on account of failure to receive blanks or for any other justifiable cause; and he may extend the time for filing returns or paying such tax not to exceed one month.²⁹⁷

“Every corporation existing under the laws of this State and subject to the annual license tax, shall within ten days after the date of its organization file its annual license tax returns with the state treasurer and commissioner of State taxes in the manner hereinafter set forth to cover the unexpired portion of the fiscal year commencing on the first day of February next preceding; and also shall pay to the state

²⁹⁷ *Ibid.* §§ 47, 48, 49, 50.

treasurer the *pro rata* annual license tax for the unexpired portion of such year, treating all fractional parts of a month as a whole month.

“Every foreign corporation shall likewise within ten days after the date of its certificate of registration in this State, file its annual license tax return, and pay the *pro rata* proportion of the annual license tax for the unexpired portion of the then current year.”³⁹⁸

§ 560. Virginia.

A corporation, whether foreign or domestic, is taxed like an individual on its property; it pays a license fee for the privilege of doing business; and it pays a “registration fee” or franchise tax.

The personal property of a domestic corporation is taxed as capital stock. The commissioner of the revenue for the local taxing district “shall ascertain the value of all capital of incorporated joint-stock companies not otherwise taxed; but real estate belonging to such company shall not be held to be capital, but shall be listed and taxed as property, and not as capital.”³⁹⁹ On this property, in addition to the local tax, a State tax of forty cents on each hundred dollars is paid.⁴⁰⁰

A license tax may be exacted for the privilege of doing business. This is a local tax.⁴⁰¹ A license does not exempt from taxation the property used in the licensed business, nor the profits of such business.⁴⁰²

Mercantile corporations pay a license fee to the State, in lieu of all State taxes on the capital, upon the amount of purchases, as follows:⁴⁰³

³⁹⁸ *Ibid.* §§ 51, 52.

³⁹⁹ Va. 1902, ch. 686, § 8, cl. 3.

⁴⁰⁰ *Ibid.* § 9.

⁴⁰¹ Code, § 535.

⁴⁰² *Ibid.* § 564.

⁴⁰³ Va. 1900, ch. 796.

Where the amount is not over \$1,000,	. . .	\$ 5 00
Over \$1,000 but not over \$2,000,	. . .	10 00
For each additional \$100 up to \$50,000,	. . .	.30
For each additional \$100 over \$50,000,	. . .	.10

In addition to the *ad valorem* property tax and the license fees for doing business "provision shall be made . . . for the payment by every domestic corporation, and foreign corporation doing business in this State, of an annual registration fee of not less than five dollars nor more than twenty-five dollars, which shall be irrespective of any specific license or other tax, imposed by law upon such company for the privilege of carrying on its business in this State, or upon its franchise or property." ⁴⁰⁴

§ 561. Washington.

There is no franchise tax. All real and personal property of the corporation is taxable. The Constitution provides that "all property in the State not exempt under the laws of the United States or under this Constitution shall be taxed in proportion to its value, to be ascertained as provided by law." ⁴⁰⁵ Every person residing in the State shall list for taxation "all his moneys, notes, accounts, bonds or stock, shares of stock of joint-stock or other companies (when the property of such company is not assessed in the State) franchises, royalties and other personal property." ⁴⁰⁶ And the real and personal property of any corporation shall be assessed the same as other real and personal property. ⁴⁰⁷

Though there is no express provision for the valuation of a franchise, it should be taxed as part of the property of the corporation.

"That the franchise is property cannot be questioned, and that, unless it is exempted from taxation, it is liable to assess-

⁴⁰⁴ Va. Const. § 157.

⁴⁰⁵ Wash. Const. Art. 7, § 1. And see 1897, ch. 70, § 1.

⁴⁰⁶ Wash. 1897, ch. 70, § 8.

⁴⁰⁷ *Ibid.* § 20.

ment, is equally correct. No argument is made here by counsel for plaintiff that any law of this state exempts franchises from taxation; but it is maintained by counsel that no statute can be found specifically providing a method of ascertaining the value of franchises, and their objection to this tax seems to be founded upon the absence of such provision for ascertainment of the value of franchises. . . . We can find no more practical difficulty in the assessment and valuation of a corporate franchise by competent officers under our revenue laws than in some other kinds of personal property which is taxed in this state. Some difficulty or perplexity arises in the valuation of much incorporeal property for taxation. It is concluded, therefore, that the franchise of plaintiff was properly assessed.”⁴⁰⁸

It was suggested in the later case that “One method of the valuation of the intangible property of the corporation, and a very fair one, is the market value of all the capital stock over and above the value of its tangible real and personal property. This method is approved by high authority.”⁴⁰⁹

But while the franchise and other intangible property may be taxed, and very properly by taking as a basis the value of the capital stock, it is improper to tax both the capital stock and the tangible property. That would be double taxation; “and, while it has been declared by this court that double taxation is not necessarily inhibited by our constitution,⁴¹⁰ yet it was observed in *Ridpath v. Spokane Co.*:⁴¹¹ ‘While the legislature may so adjust the revenue system as to occasion double taxation, such taxation will not be inferred unless necessarily imposed in carrying out the law.’ The list made up by the assessor under our revenue law is upon the valuation of property. We think, when all the property into which the

⁴⁰⁸ *Reavis, J., in Commercial E. L. & P. Co. v. Judson*, 21 Wash. 49, 56 Pac. 829.

⁴⁰⁹ *Lewiston Water & Power Co. v. Asotin County*, 24 Wash. 371, 64 Pac. 544.

⁴¹⁰ *Commercial E. L. & P. Co. v. Judson*, 21 Wash. 49, 56 Pac. 829.

⁴¹¹ 23 Wash. 436, 63 Pac. 261.

capital stock of the corporation entered was assessed, the valuation of the corporation's property was complete." ⁴¹²

It was therefore held in this case that where all the property of the corporation is tangible property and is taxed as such, it is not possible to tax the capital stock.

In addition to the tax upon the property of the corporation, a license fee is exacted of every corporation doing business in the State. "Every corporation incorporated under the laws of this state, and every foreign corporation having its articles of incorporation on file in the office of the secretary of state shall, on or before the first day of July of each and every year, pay to the secretary of state, for the use of the state, the following license fees: Every corporation having a capital stock, ten dollars. Every corporation failing to pay the said annual license fee, on or before the first day of July of each and every year, and desiring to pay the same thereafter, and before the first day of January next following, shall pay to the secretary of state, for the use of the state, in addition to the said license fee, the following further fee, as a penalty for such failure: Every corporation, two dollars and fifty cents. Every corporation failing to pay the said license fees and penalties on or before the thirty-first day of December of any year shall forfeit the sum of five dollars for every day which it shall continue to do business as a corporation, after said date, to be recovered in an action in any court of competent jurisdiction." ⁴¹³

§ 562. West Virginia.

Corporations are taxed by the State and locally on their property within the State; and in addition a license tax is exacted of every domestic corporation and of every foreign corporation doing business within the State.

It is provided by the Constitution that "taxation shall be equal and uniform throughout the State, and all property both real and personal, shall be taxed in proportion to its value,

⁴¹² *Ibid.*

⁴¹³ Wash. 1897, ch. 70, § 5.

to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value. . . . The legislature shall have power to tax, by uniform and equal laws, all privileges and franchises of persons and corporations." ⁴¹⁴

"He (the assessor) shall ascertain from the proper officers or agents of all incorporated companies in his district (except railroads, and foreign insurance, telegraph, and express companies) the actual value of the capital employed or invested by them in their trade or business (exclusive of real estate and property exempt by law from taxation), and enter the same in his personal property book. The real estate of such companies shall be assessed, and entered in the land book as in other cases. The value of the capital shall be estimated by taking the aggregate value of all the personal property of the company, not exempt from taxation, wherever situated, including their money, credits, and investments, whether in or out of the state, and deducting from the said money, credits, and investments, and not from said aggregate, what they owe to others as principal debtors. If a company have branches, each branch shall be assessed separately in the district where the principal office for transacting its financial concerns is located, or if there be no such office, then in the district where its operations are carried on. . . . When the capital of a company is assessed as aforesaid, the personal property thereof, which shall not be held to include the locks or dams of a navigation company, shall not be otherwise assessed, nor shall any individual shareholder or partner therein be required to list or be assessed with his share, portion, or interest in the said capital." ⁴¹⁵

In addition to the property tax, all domestic corporations and all foreign corporations doing business in the State pay a license tax. Every corporation which has heretofore obtained or which shall hereafter obtain a charter or certificate

⁴¹⁴ W. Va. Const. Art. 10, § 1.

⁴¹⁵ W. Va. Code, ch. 29, § 64.

of incorporation from this State, and whose principal place of business or chief works are located within this State shall pay an annual license tax as follows:

If the authorized capital stock be not more than ten thousand dollars, ten dollars.

If the authorized capital stock be more than ten thousand dollars and not more than twenty-five thousand dollars, fifteen dollars.

If the authorized capital stock be more than twenty-five thousand dollars and not more than fifty thousand dollars, twenty dollars.

If the authorized capital stock be more than fifty thousand dollars and not more than one hundred thousand dollars, twenty-five dollars.

If the authorized capital stock be more than one hundred thousand dollars and not more than one million dollars, twenty-five dollars, and an additional five cents on each and every one thousand dollars or fraction thereof in excess of one hundred thousand dollars.

If the authorized capital stock be more than one million dollars, seventy dollars, and an additional ten dollars on each and every million dollars, or fraction thereof, in excess of the first million dollars.

Every corporation which has heretofore obtained or which shall hereafter obtain a charter or certificate of incorporation from this State, and whose principal place of business or chief works are located outside of this State . . . shall pay an annual license tax as follows:

If the authorized capital stock be not more than twenty-five thousand dollars, twenty dollars.

If the authorized capital stock be more than twenty-five thousand dollars and not more than one hundred thousand dollars, fifty dollars.

If the authorized capital stock be more than one hundred thousand dollars and not more than one million dollars, fifty dollars, and an additional forty cents on each and every one

thousand dollars, or fraction thereof in excess of one hundred thousand dollars.

If the authorized capital stock be more than one million dollars and not more than two million dollars, four hundred and ten dollars, and an additional thirty cents on each and every one thousand dollars, or fraction thereof, in excess of one million dollars.

If the authorized capital stock be more than two million dollars and not more than three million dollars, seven hundred and ten dollars, and an additional twenty cents on each and every one thousand dollars, or fraction thereof, in excess of two million dollars.

If the authorized capital stock be more than three million dollars and not more than four million dollars, nine hundred and ten dollars, and an additional ten cents on each and every one thousand dollars, or fraction thereof, in excess of three million dollars.

If the authorized capital stock be more than four million dollars, one thousand and ten dollars, and an additional fifty dollars on each and every one million dollars, or fraction thereof, in excess of four million dollars.⁴¹⁶

This discrimination between resident and non-resident corporations with respect to taxation was attacked as unconstitutional; first, because it violated the Constitution of West Virginia, which required taxation to be uniform; second, because it violated the Constitution of the United States. The Supreme Court of Appeals, however, held it constitutional.⁴¹⁷ In answer to the first argument, that the State in so discriminating was taxing the privilege of doing business in another State, which it did not grant, Poffenbarger, J., said:

“The state in so doing does not grant, nor attempt to grant, any such privilege. It is merely dealing with its own creatures, and distinguishing between those of them which substantially confine themselves, in the transaction of their business, to the

⁴¹⁶ *Ibid.* ch. 32, §§ 86, 87, as amended, 1903, ch. 3.

⁴¹⁷ *Blue Jacket Consol. Copper Co. v. Scherr*, 50 W. Va. 533, 40 S. E. 514.

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Every corporation which has heretofore obtained or which shall hereafter obtain a charter or certificate of incorporation from this State, and whose principal place of business or chief works are located outside of this State . . . shall pay an annual license tax as follows:

If the authorized capital stock be not more than twenty-five thousand dollars, twenty dollars.

If the authorized capital stock be more than twenty-five thousand dollars and not more than one hundred thousand dollars, fifty dollars.

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⁴¹⁶ *Ibid.* ch. 32, §§ 86, 87, as amended, 1903, ch. 3.

⁴¹⁷ *Blue Jacket Consol. Copper Co. v. Scherr*, 50 W. Va. 533, 40 S. E. 514.

limits of the state, and those which signify their desires not to so confine themselves, but substantially to remove their business and property holdings and the residence of their officers and stockholders into that broad field of operation permitted by the law of comity. In so doing the state does not pretend to confer any right of its creation, but simply extends to its own creatures the right to go beyond its own limits in these respects. The power of the state is sovereign and unlimited in its control in respect to what corporations it will create and what it will permit them to do, in respect to what privileges it will confer and what it will withhold. . . .

“Corporations being mere artificial persons, which the legislature has the right to call into existence or not to create at all, why may it not impose any restrictions or conditions it pleases upon the creation, or annex any condition subsequent for the purpose of forfeiting their charter upon their failure to comply with such conditions? Who can inquire into the reason which the legislature shall deem sufficient for imposing such conditions and restrictions? In the interest of the state’s own development the legislature may deem it proper to say that every corporation created by it shall maintain its plant, its principal office, and hold its property within the state. If it should determine so to do, who can complain of this exercise of its sovereign power in the premises? . . . From what has already been said it must be apparent to all that there is a material and substantial, and not a mere fanciful, distinction between these two classes of corporations. One class pays taxes upon its franchise and also upon its property, both to the state and to the counties, districts, cities, and towns in which the property is located. The other class pays no taxes upon any property, but only upon its franchise. If, therefore, the franchise tax upon both classes were the same, there would be a vast difference in the burden of taxation resting upon the two classes of corporations as regards this state. . . .

“One class contributes to the wealth and development of the state; the other contributes nothing in that respect. One

class subjects its property to ordinary taxation within the state; the other does not. To make each bear its proper share of the burden of taxation of the state of the citizenship of each it becomes necessary to make this classification, and it is made for that purpose, and no other. That is the only reason for the classification of other privileges and franchises in the matter of taxation."

Foreign corporations are to report to the auditor annually the number of its shares and their par value; the amount of property owned and used in West Virginia and where it is situated; the value of its property owned and used outside the State; and the proportion of its capital stock represented by property owned and used in West Virginia. The auditor shall then fix its license tax according to the proportion of its capital stock which is represented by its property owned and used within the State, according to the rates prescribed for resident domestic corporations, but not less than one hundred dollars a year.⁴¹⁸

§ 563. Wisconsin.

There is no franchise tax, and no peculiar corporation tax. A corporation is taxed upon all its property,⁴¹⁹ and this property includes the intangible as well as the tangible property of the corporation;⁴²⁰ such as franchises.⁴²¹ Foreign corporations pay a tax on all property within the State.⁴²²

§ 564. Wyoming.

There is no franchise tax. The property of corporations is taxed like that of individuals. Property subject to taxation includes "all real and personal property within this State of every kind and description not heretofore enumerated, be-

⁴¹⁸ W. Va. Code, ch. 32, § 88, as amended 1903.

⁴¹⁹ Wis. Stat. § 1034.

⁴²⁰ State v. Anderson, 90 Wis. 550, 63 N. W. 746.

⁴²¹ Washburn v. Washburn Waterworks Co., 98 N. W. 539.

⁴²² Wis. Stat. § 1040.

longing to or claimed by any incorporated company, whether incorporated in this State or not.”⁴²³

The method of assessment is to find and tax the value of the capital stock as a whole. “The paid-in capital stock of all incorporated companies or associations doing business in this State, together with the accumulated surplus, not including real estate situated in any other State than this, shall be assessed to the company or association issuing the same, and the persons holding the capital stock of such companies or associations shall not be assessed therefor. . . . The capital stock of domestic corporations shall not be taxed.”⁴²⁴ The revisers appear to have used “capital stock” in two separate senses in this section; the last clause seems to represent an earlier provision that “the capital stock of [domestic] corporations, representing as it does simply the interests of the owners thereof in the property of such corporations, shall not be taxed.”⁴²⁵ The law therefore appears to be that the property of the corporation is assessed as a whole as its capital stock, but the shares are not taxed.

§ 565. England.

There is neither a franchise nor a property tax. The only general direct tax assessed in England upon English companies is the income tax. An English company must pay an income tax upon its entire income, although the whole of its profits may be derived from property situate abroad,⁴²⁶ and although the company may also be registered where the property is situate and its business may be conducted there by a resident committee of the board of directors.⁴²⁷ And this

⁴²³ Wyo. Rev. Stat. § 1763.

⁴²⁴ *Ibid.* § 1775.

⁴²⁵ Wyo. 1895, ch. 87.

⁴²⁶ *Calcutta Jute Mills Co. v. Nicholson*, 1 Ex. D. 428; *Alexandria Water Co. v. Musgrave*, 11 Q. B. D. 174; *San Paulo Brazilian Ry. v. Carter*, [1896] A. C. 31.

⁴²⁷ *Lindley, Companies*, 6th ed., p. 612; *Casena Sulphur Co. v. Nicholson*, 1 Ex. D. 428; *London Bank of Mexico v. Apthorpe*, [1891] 2 Q. B. 378.

covers property earned abroad and never remitted to England.⁴²⁸

Foreign corporations and companies not resident in England but exercising a trade there are assessable on profits earned in England ⁴²⁹ and on profits earned abroad and remitted to England for division among shareholders.⁴³⁰

A company "exercises a trade" in England when it carries on business there at its own office, by means of its own employees. Thus a foreign telegraph company, having cables to England and offices there where it received messages for transmission, exercised a trade in England; as the court said a railway company would do which had a station at Dover and there took passengers to Calais.⁴³¹ Where goods were consigned for sale to an English selling agent, the title passing upon sale and delivery in England, this was held to be exercising a trade in England.⁴³² But this is the extreme case. Where an agent in England merely takes orders and transmits them to the company abroad, which there ships the goods ordered to the purchasers, there is no exercise of the company's trade in England.⁴³³ Income means the balance of gain over loss in any fiscal year, and cannot be taxed when there is no such balance.⁴³⁴

§ 566. New Brunswick.

There is no franchise tax, but the property is taxed as follows: Real estate belonging to a corporation or any joint stock company shall be assessed in the Parish where it is situated, and by such name as is hereinafter provided in the

⁴²⁸ *Gresham Life Ass. Soc. v. Bishop*, [1901] 1 Q. B. 153; *Scottish Mtg. Co. v. Comrs.*, 24 Sc. L. R. 87, 14 Rettie, 98.

⁴²⁹ *Atty. Gen. v. Alexander*, L. R. 10 Ex. 20; *Werle v. Colquhoun*, 20 Q. B. D. 753; *Wingate v. Inland Revenue*, 24 Rettie, 939, W. N. 1898, 128.

⁴³⁰ *Lindley, Companies*, 6th ed., p. 614; *Gilbertson v. Ferguson*, 7 Q. B. D. 562.

⁴³¹ *Erichsen v. Last*, 8 Q. B. D. 414.

⁴³² *Watson v. Sandie*, [1898] 1 Q. B. 326.

⁴³³ *Grainger v. Gough*, [1896] A. C. 325.

⁴³⁴ *Lawless v. Sullivan*, 3 App. Cas. 373.

case of the assessment of the personal property of such corporation.⁴³⁵

Personal estate belonging to a joint stock or other corporation having its principal place of business within the Province may be assessed in the Parish where their principal place of business is situated, in the name of the corporation or of the president.⁴³⁶ A foreign corporation having a place of business within the Province shall be assessed in respect of its personal property within the Province, and upon its income derived from its business within the Province, in the same manner as to personal property as a joint stock or other corporation referred to in the 24th section, and as to its income as an inhabitant of the Province.⁴³⁷ The paid-up capital stock of a joint stock company at its correct value at the time of the assessment, shall be assessed as personal property of the corporation, but the amount assessed on any real estate of such company shall for the purpose of assessment be deducted from the value of such paid-up capital.⁴³⁸

Where the corporation pays a tax upon its capital stock, the stockholder is not assessed in the Province upon his stock or income from it.⁴³⁹

§ 567. Nova Scotia.

There is no franchise tax, but a corporation like an individual pays a tax on its tangible property. There seems to be no tax upon intangible property.

"For all purposes for which local and direct taxes are and shall be levied . . . all land and all such personal property as is hereinafter described, whether owned by individuals, copartners or corporations, shall be liable to taxation, subject to the exemptions," etc.⁴⁴⁰ "The words 'personal

⁴³⁵ N. Br. Consol. Stat. ch. 100, § 18.

⁴³⁶ *Ibid.* § 24.

⁴³⁷ *Ibid.* § 27.

⁴³⁸ *Ibid.* § 29.

⁴³⁹ *Ibid.* § 25.

⁴⁴⁰ N. Sc. Rev. Stat. ch. 58, § 3.

property' shall be understood to include all such goods, chattels and other property as are enumerated in Schedule A, hereto annexed, and no other. Schedule A: All personal chattels of every kind and description at their actual cash value, except as qualified beneath. The average stock of goods on hand of every merchant, trader or dealer, manufacturer, tradesman or mechanic; such average stock to be considered the mean between the highest and lowest amount of goods on hand at any time during the year, and to be estimated at cost price. One half the value of ships afloat, whether in the Province or elsewhere." ⁴⁴¹

Foreign corporations pay an annual registration fee, where the capital does not exceed \$10,000, of ten dollars; not exceeding \$100,000, twenty dollars; not exceeding \$500,000, forty dollars; exceeding \$500,000, fifty dollars.⁴⁴²

§ 568. Ontario.

There is no franchise tax. A corporation pays taxes on its realty and personalty like an individual, according to the following provisions:

"Personal property shall include all goods, chattels, interest on mortgages, dividends from bank stock, dividends on shares of stocks of other incorporated companies, money, notes, accounts and debts, at their actual value, income and all other property except land and . . . property herein expressly excepted." ⁴⁴³

Exemptions from taxation include:

"24. So much of the personal property of any person as is equal to the just debts owed by him on account of such property, except debts secured by mortgage on real estate or unpaid on account of purchase money therefor."

"27. Rental or other income from real estate except interest on mortgage." ⁴⁴⁴

⁴⁴¹ *Ibid.* § 4.

⁴⁴² Nov. Sc. 1903, ch. 16, § 21.

⁴⁴³ Ont. Rev. Stat. ch. 224, §§ 2, 10.

⁴⁴⁴ *Ibid.* § 7.

"All personal property within the Province, the owner of which is not resident in the Province, shall be assessable like the personal property of residents; . . . this section shall not apply to dividends which are payable to, or other choses in action which are owned by and stand in the name of, a person who does not reside in the Province." ⁴⁴⁵

"(1) The personal property of an incorporated company, other than the companies mentioned in subsection 2 of this section, shall be assessed against the company in the same manner as if the company were an unincorporated company or partnership. (2) The personal property of a bank or of a company which invests the whole or the principal part of its means in gas works, water works, plank or gravel roads, railway and tramroads, harbors, or other works requiring the investment of the whole or principal part of its means in real estate, shall as hitherto be exempt from assessment; but the shareholders shall be assessed on the income derived from such companies." ⁴⁴⁶

Extra-provincial corporations pay an annual fee which is fixed from time to time by the Lieutenant-Governor. ⁴⁴⁷

§ 569. Quebec.

Corporations are specially taxed as follows:

"Every one of the following companies and corporations doing business in this Province, namely every bank carrying on the business of banking in this Province, every insurance company accepting risks and transacting the business of insurance therein, every incorporated company carrying on any labor, trade or business therein, every incorporated loan company making loans therein, every incorporated navigation company running a regular line of steamers, steamboats or other vessels in the waters thereof, every telegraph company working a telegraph line or part of a telegraph line therein, every telephone

⁴⁴⁵ *Ibid.* § 38.

⁴⁴⁶ *Ibid.* § 39.

⁴⁴⁷ Ont. 1903, ch. 7, § 53.

company working a telephone line therein, every city passenger railway or tramway company working a line of railway or tramway therein, and every railway company working a railway or part of a railway therein, shall annually pay the several taxes mentioned and specified in article 1145, which taxes are hereby imposed upon each of such commercial corporations respectively.”⁴⁴⁸

The taxation of insurance companies and public service companies is elsewhere considered. The special taxes on “incorporated companies” are as follows:⁴⁴⁹

(a) One tenth of 1% on paid-up capital to \$1,000,000, and \$25 for each \$100,000 or fraction above.

(b) An additional tax of \$50 for each place of business, factory or workshop in the cities of Montreal and Quebec, and of \$20 for each place of business, factory or workshop in every other place.

(c) The Lieutenant-Governor in case of a foreign corporation or a corporation acting abroad may reduce the tax, but not below $\frac{1}{16}$ of 1% on the capital employed in the Province.

⁴⁴⁸ Que. Rev. Stat. § 1143.

⁴⁴⁹ *Ibid.* § 1145, as amended 1895, ch. 15.

CHAPTER XXIII

TAXATION OF SPECIAL CORPORATIONS: MANUFACTURING COMPANIES.

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| <p>§ 571. Taxation of property of manufacturing companies.</p> <p>572. Exemption of property.</p> <p>573. The Mississippi statute.</p> <p>574. The New Jersey statute.</p> <p>575. The New York statute.</p> <p>576. The Pennsylvania statute.</p> | <p>§ 577. What is manufacture: assembling materials.</p> <p>578. What is manufacture: controlling natural forces.</p> <p>579. Manufacture not merely incidental.</p> |
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§ 571. Taxation of property of manufacturing companies.

Manufacturing corporations are specially taxed in a number of States. In a few it is provided that such corporations shall pay an *ad valorem* tax upon the average value of its raw materials as part of its property.¹

"Any person, firm or corporation, who purchases, receives, or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing . . . or by the combination of different materials, with a view to making gain or profit by so doing, and selling the same, shall be held to be a manufacturer for the purposes of this title, and he shall list for taxation the average value thereof . . . as estimated upon those materials only which enter into its combination or manufacture."² Under such a statute the value of labor and fuel used in manufacture is not included.³

In a number of States it is expressly provided that the

¹ Kan. Gen. Stat. ch. 158, § 58.

² Ia. Code, § 1319.

³ Appeal of Iowa Pipe & Tile Co., 101 Ia. 170, 70 N. W. 115; see *Dean v. Solon*, 97 Ia. 303, 66 N. W. 182.

machinery and materials of a manufacturing company shall be locally taxed.⁴

§ 572. Exemption of property.

Exemption from taxation is frequently granted to manufacturing companies, whether for a number of years or permanently.

In Tennessee manufacturing corporations are exempted from taxation on articles manufactured from the produce of the State,⁵ and in West Virginia on articles manufactured in the State.⁶

In some States manufacturing establishments may be exempted from taxation for ten years after their establishment.⁷ In Alabama corporations for the manufacture of cloth or of ships are exempt for five years.⁸ In Delaware manufacturing corporations are exempt from the franchise tax.⁹ In Illinois they are assessed like individuals, instead of paying a tax on their capital stock like ordinary corporations.¹⁰ The same provision appears to be made in Kansas.¹¹ In Louisiana a special license tax is imposed upon manufacturing corporations;¹² but for ten years from January 1, 1900, the legislature has exempted from local taxation the capital, machinery and other property employed in the manufacture of textile fabrics, yarns, rope, cordage, leather, shoes, harness, saddlery, hats, clothing, flour, machinery, articles of tin,

⁴ Ill. Rev. Stat. ch. 120, § 3; Kan. Gen. Stat. ch. 158, § 20; Mo. Rev. Stat. ch. 6, § 14, cl. 3; Or. Misc. L. § 2742; Vt. Stat. of 1894, § 374; Wash. 1897, ch. 71, § 19; Mich. Stat. § 4161d; N. Dak. 1897, ch. 121, § 24; Mo. Rev. Stat. § 7538.

⁵ Tenn. 1901, ch. 174, § 23.

⁶ W. Va. Code, ch. 29, § 43.

⁷ N. H. Stat. ch. 55, § 11; N. J. Gen. L. Boroughs, § 124 (five years); R. I. Gen. L. ch. 44, § 5; Vt. Stat. § 365.

⁸ Ala. 1901, No. 1151, § 2.

⁹ Del. 1901, ch. 15, § 4.

¹⁰ Ill. Rev. Stat. ch. 120, § 3, cl. 4.

¹¹ Kan. Gen. Stat. ch. 158, § 28.

¹² La. 1898, No. 171, § 3, cl. 1.

copper and sheet iron, agricultural implements, and furniture and other articles of wood, marble or stone; soap, stationery, ink and paper, boat building and fertilizers and chemicals; provided that not less than five hands are employed in any one factory.¹³

§ 573. The Mississippi statute.

In Mississippi manufacturing companies are exempted from taxation as follows:

All permanent factories or plants of the kind hereinafter named which shall hereinafter be established in this State before the first day of January, 1906, shall be exempt from all State, county and municipal taxation for a period of ten years, to-wit: All permanent factories for working of cotton, jute, ramie, wool, silk, furs or metals; all permanent pork-packing and cold storage factories or plants, where the amount of capital invested shall not be less than ten thousand dollars; all permanent factories for manufacturing machinery, implements, or articles of use in a finished state and ready for consumer's use without additional process of labor; all permanent factories for making wagons, carriages, buggies, clothing or shoes, complete; all permanent factories for making barrels or boxes complete, whether coopered or loose, ready for transportation; all permanent additions or extensions, costing not less than ten thousand dollars, hereafter made before the first day of January, 1906, to any permanent factory or plant hereafter established under the provisions of this act. Any exemption claimed under this act shall commence from the date of the charter if the factory or establishment be a corporation; and from the date of beginning working operations if the same be an individual enterprise. Any factory which has been abandoned for not less than three years, and commencing operations within two years from November 1, 1896, shall be entitled to such exemption. A corporation or person claiming exemption

¹³ La. Const. Art. 230.

under this paragraph shall apply in writing to the Auditor of Public Accounts, giving full information as to the property proposed to be exempted, the kind of articles to be manufactured; and the Auditor, with the written advice of the Attorney-General, shall determine whether the property is exempt. The Auditor shall notify the assessor of the county or municipality, in writing, of his decision in the premises, stating the property to be exempted, and the date when the exemption begins and ends. A factory or manufacturer belonging to or being a trust, combine or pool, shall not enjoy exemption from taxation. All creameries established in this State within two years last passed from April 1, 1896, and all those which shall be established hereafter before January 1, 1896, shall be exempt from all taxation for ten years, under the terms and conditions of this act.¹⁴

All factories or plants of the kind hereinafter named, which are now in course of establishment or which shall hereafter be established in this State before the first day of January, 1910, shall be exempt from all State, county and levee taxation for a period of five years, viz.: All factories for working cotton, jute, ramie, wool, silk, furs or metals; all factories for manufacturing machinery, implements or articles of use in a finished state and ready for consumer's use without additional process of labor; all factories for making wagons, carriages, buggies, clothing or shoes complete; all factories for making barrels or boxes complete, whether coopered or loose, ready for transportation, and all creameries.

Any exemption under the provisions of this act shall commence from the date of the charter, if the factory, establishment or enterprise be owned by a corporation; and if an individual enterprise, from the date of the commencement of the work. A person or corporation claiming exemption from taxation under this act shall apply in writing to the Auditor of Public Accounts, giving full information as to

¹⁴ Miss. Code, § 3744, as amended by Act of March 23, 1896.

the property proposed to be exempted, the kind of articles to be manufactured, and the Auditor, with the written advice of the Attorney General, shall determine whether the property is exempt. The auditor shall notify the Chancery Clerk of the county in which such factory or enterprise may be located, in writing, of his decision in the premises, stating the property to be exempted and the date when the exemption begins and ends, and the Chancery Clerk shall record such statement in a book to be kept in his office for the purpose; and the Auditor shall record and preserve, in a record to be kept for such purpose in his office, all opinions so rendered by him and statements furnished to the Chancery Clerk relative to such exemptions.

The provisions in this act shall in no wise affect or impair any exemption granted to factories or other enterprises under the provisions of law heretofore in force in this State.

A factory or factories or other enterprises exempted from taxation under the provisions of this act, which may belong to, or being a trust, combine or pool, shall not enjoy such exemptions.

All cities, towns and villages are hereby authorized to encourage the establishment of such factories and plants within their respective corporate limits, by exempting the same from municipal taxation for a period not longer than ten years.¹⁵

§ 574. The New Jersey statute.

In New Jersey a manufacturing company at least fifty per cent. of whose capital stock is invested in manufacturing carried on within the State is exempt from the franchise tax; and if any portion of its capital stock less than fifty per cent. is so invested, it shall to that extent be exempt from the franchise tax.¹⁶

¹⁵ Miss. Act of March 6, 1900.

¹⁶ N. J. Corp. Supp. § 150; *Standard U. G. C. Co. v. Atty. Gen.*, 46 N. J. Eq. 270, 19 Atl. 733, 19 A. S. R. 394; *Norton N. C. & S. B. Co. v. Assessors*, 53 N. J. L. 564, 22 Atl. 352; *Edison Phonograph Co. v. Assessors*, 55 N. J. L.

§ 575. The New York statute.

In New York manufacturing corporations to the extent only of the capital actually employed in the State in manufacturing and in the sale of the product of such manufacturing are exempt from taxation on capital stock.¹⁷

Under this provision if the corporation, even if organized only for a manufacturing purpose, carries on another business in addition to or in connection with the business of manufacture, it is not entitled to any exemption whatsoever;¹⁸ and so a corporation engaged in the manufacture of asphaltum compound and in laying pavements from it, not being engaged entirely in manufacturing, is not entitled to exemption.¹⁹ Though part of the business only is done within the State, if in fact the sole business done in the State is manufacture, the exemption applies.²⁰

§ 576. The Pennsylvania statute.

In Pennsylvania so much of the capital stock of corporations, limited partnerships and joint stock associations, organized for manufacturing purposes, as is invested in and actually and exclusively employed in carrying on manufacturing within the State (except companies engaged in brewing or distilling of spirits or malt liquors, and such as enjoy and exercise the right of eminent domain) is exempt from the tax on capital stock, but so much of the capital stock of said companies so organized as may be invested in any property or business not strictly incident or appurtenant to their manufacturing business is subject to the tax.²¹

Under this provision the purpose expressed in the charter

55, 25 Atl. 329; *Edison United P. Co. v. Assessors*, 57 N. J. L. 520, 31 Atl. 1019; *Electric S. B. Co. v. Assessors*, 60 N. J. L. 66, 36 Atl. 1090.

¹⁷ N. Y. 1896, ch. 908, § 183.

¹⁸ *P. v. Roberts*, 158 N. Y. 162, 52 N. E. 1102; *P. v. Roberts*, 158 N. Y. 168, 52 N. E. 1104.

¹⁹ *People v. Morgan*, 59 App. Div. 302, 69 N. Y. S. 263.

²⁰ *People v. Wemple*, 133 N. Y. 323, 31 N. E. 238.

²¹ Pa. P. L. 1889, p. 431, § 21.

must be manufacture alone; but if in fact it carries on another business in addition to that for which it was organized, it does not forfeit its exemption so far as its capital employed in manufacture is concerned. This was so held in the case of a corporation organized to manufacture coke, which in fact mined its own coal for its raw material. The court said: "What, then, is the situation of the appellant? It is in name, in business purposes, and in product prepared for the market, a manufacturing company. In the conduct of its manufacturing business it seeks to cheapen its raw material, and thereby the cost of its product, by mining the coal it consumes. . . . It was intended . . . to discriminate between companies organized for the conduct of two or more lines of business simultaneously and such as were organized for the purpose of manufacturing. A company incorporated for the latter purpose will not lose its character or its privileges because of an effort to supply itself with what it needs for its manufacturing business in some cheaper way than by purchase." ²²

If part of the capital is invested in a non-manufacturing business, and even if the corporation merely owns property outside that used in business, as an investment of its surplus, the exemption does not extend to that portion of the company's property so invested, as for instance in dwellings for its workmen. ²³

§ 577. What is manufacture: assembling materials.

How far assembling materials and combining them into a new product is manufacturing has been much discussed. "The process of manufacture" as the New York Court of Appeals has said, "is supposed to produce some new article

²² Williams, J., in *Com. v. Juniata Coke Co.*, 157 Pa. 507, 27 Atl. 373, 22 L. R. A. 349.

²³ *Adams v. Tombigbee Mills*, 78 Miss. 676, 29 So. 470; *Com. v. Mahoning R. M. Co.*, 129 Pa. 360, 18 Atl. 135; *Com. v. Westinghouse A. B. Co.*, 151 Pa. 276, 24 Atl. 1111.

by the application of skill and labor to the raw material.”²⁴ On this principle it has been held that shells cleaned by acid, and then ground on an emery wheel, and some of them afterwards etched by acid, and all of them intended to be sold as ornaments,—as shells,—are not manufactures of shells;²⁵ and that cutting grass, converting it into hay, pressing it in bales, and transporting it to market, did not result in the production of a manufactured article.²⁶

“Water might be improved by filtration, fruit by judicious pruning of tree or vine, or protection by glass, sand and gravel by screening, cobblestones by selection, and coal by breaking, and each by various processes stored until the season of demand, when, having been ‘collected, stored, preserved, and prepared for sale,’ the natural article, and no other, would be put upon the market.”²⁷ And it was accordingly held that mixing teas and roasting, mixing and grinding coffee so as to form a “combination” tea or coffee which was saleable in the market was not manufacturing. “The combination of teas, and the roasting, grinding, and mixing of coffee, are processes which result in no new article, as it is still coffee and tea that is placed upon the market.”²⁸ So it has been held that purchasing sheep, slaughtering them, pulling the wool from the hides, selling it and the hides, converting the offal into fertilizer, reducing the carcasses to a temperature which will retard decomposition and shipping them to the place of delivery in refrigerator cars, does not constitute “carrying on manufacture.”²⁹

On the other hand, where raw materials were assembled and combined by a secret process at a high temperature to form asphalt for paving, the process was held to be one of

²⁴ Bartlett, J., in *P. v. Roberts*, 145 N. Y. 375, 40 N. E. 7.

²⁵ *Hartranft v. Wiegmann*, 121 U. S. 609, 30 L. ed. 1012.

²⁶ *Frazee v. Moffitt*, 20 Blatch. 267, 18 Fed. 584.

²⁷ *Danforth, J.*, in *P. v. Knickerbocker Ice Co.*, 99 N. Y. 181, 183, 1 N. E. 669.

²⁸ *P. v. Roberts*, 145 N. Y. 375, 40 N. E. 7.

²⁹ *P. v. Roberts*, 155 N. Y. 408, 50 N. E. 53.

manufacture. "The compound is made of different raw materials, to which are applied labor and skill, with the aid of machinery and mechanical appliances, resulting in the production of a new and distinct substance. None of the raw materials alone are of any value for the purpose for which the compound is to be used. The natural products are entirely changed by artificial combination and extreme heat, making a well-known and commonly used material. We are of the opinion that the production of the compound by the relator is manufacturing." ³⁰

So the making of paint by a secret process, combining, mixing and grinding by machinery the raw materials, is manufacture. "None of the separate ingredients can be used for any of the purposes for which the mixed paint is used. The article thus produced by the relator is a commercial article of value, recognized by a specific and distinctive name,—a result of the use of capital, labor, and machinery. It is a new article, different from any of its ingredients, fitted for sale, use, and consumption, and is within the definitions of what constitutes a 'manufactured article,' and the making of it manufacturing." ³¹ So where the corporation bought and assembled the parts of a fountain pen, and then by machinery and skilled workmen fitted them together according to a patented process, it was held to be a manufacturing corporation. "Whoever creates a useful thing by mechanical labor is entitled, usually, to be called a 'manufacturer.' The fact that he purchases, rather than makes, some of the parts, does not destroy that character. A boiler maker is a manufacturer, although he purchases the boiler plates rolled into form, and purchases also the tubes and the rivets. So with a cabinet maker, who buys the wood he uses in polished form or carved, and buys the cloth, hair, and leather he uses. No manufacturer of the finished product in this age works up the raw material. That is done by specialists all along the line. The practical manu-

³⁰ Chase, J. in *P. v. Morgan*, 61 App. Div. 373, 70 N. Y. S. 516.

"The true inquiry would seem to be whether a corporation, organized as this is, and carrying on the business that this does, and in the manner shown, would not be considered, in common language, as engaged in some manufacturing process, or carrying on some manufacturing business, though granting all that is said by experts and others about electricity as a natural element or force. To say that electricity exists in a state of nature, and that a corporation engaged in the business that the relator is collects or gathers it, does not fully or accurately express the process by means of which it is enabled to sell and deliver something useful and valuable to its customers. If due weight is given to the fact that electricity, as now used and applied to the business of life, such as the lighting of streets and buildings, the propulsion of cars and machinery, and like operations, is essentially the product of the skill and labor of man, there is no difficulty in reaching the conclusion that a corporation engaged in the business of generating, storing, transmitting, and selling it is what was commonly known at the time of the passage of the corporation tax law in 1880,—a 'manufacturing corporation.' " ³⁴

"The distinction is not an obscure one. The mere appropriation or use of an article or thing which is furnished by nature is not a manufacturing operation. The liberation of natural gas from its hiding place in the earth, and its transportation through pipes to consumers, would not properly be called a manufacturing operation; but the production of illuminating gas, and its distribution to consumers by means similar to the operation which the relator carries on, constitutes manufacturing, and a corporation organized for that purpose is a manufacturing corporation.³⁵ So, too, the collection, storage, preparation for market, and transportation of ice is not a manufacture, but the production of ice by artificial means is manufacture." ³⁶

³⁴ O'Brien, J., in *P. v. Wemple*, 129 N. Y. 543, 29 N. E. 808.

³⁵ *Gas-Light Co. v. Brooklyn*, 89 N. Y. 409.

³⁶ *P. v. Knickerbocker Ice Co.*, 99 N. Y. 181, 1 N. E. 669.

So though the generation of electricity is manufacture, merely furnishing it is not.³⁷

§ 579. Manufacture not merely incidental.

That the corporation is itself to use its product in carrying out its contracts is not important,³⁸ though the ordinary purpose of manufacturing is to sell the product. . . Indeed, if the sale of the product is the important thing, the manufacturing being merely incidental, the corporation may be a mercantile rather than a manufacturing one.³⁹ Thus a printing business is ordinarily a manufacturing business, a publishing business mercantile. A corporation for the publication of a newspaper, and also to print the paper it publishes, is not a manufacturing business, while a corporation for job printing is a manufacturing corporation.⁴⁰

³⁷ *Evanston E. I. Co. v. Kochersperger*, 175 Ill. 26, 51 N. E. 719.

³⁸ *P. v. Morgan*, 61 App. Div. 373, 70 N. Y. S. 516.

³⁹ *Press Printing Co. v. Assessors*, 51 N. J. L. 275, 16 Atl. 173; *P. v. Roberts*, 155 N. Y. 1, 49 N. E. 248.

⁴⁰ See *C. v. Arrott S. P. M. Co.*, 145 Pa. 49, 22 Atl. 243.

CHAPTER XXIV.

TAXATION OF SPECIAL CORPORATIONS: BANKS.

§ 581. Taxation of national banks.	§ 584. Moneyed capital.
582. Taxation of shares.	585. Taxation of State banks.
583. Uniform taxation.	

§ 581. Taxation of national banks.

The taxation of national banks throughout the United States is governed by the following provisions:¹

"All stocks, bonds, treasury notes, and other obligations of the United States, shall be exempt from taxation by or under state or municipal or local authority."

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the state within which the association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by nonresidents of any state shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

¹ U. S. Rev. Stat. §§ 3701, 5219.

Before the passage of the latter section it was held, under the former section, that United States bonds owned and held by a bank must be deducted from the amount of its capital in making its returns for taxation;² but afterwards it was held by the same court that the value of the bank shares might be fixed upon the whole capital stock, including the bank's investments in government bonds.³ So that the holding now is that shares in national banks and in incorporated State banks may be taxed at their true value in money, including in such value all government bonds owned and held by such bank.⁴

The power to tax national banks is derived wholly from this act of Congress, and must be exercised strictly in accordance with it. "The respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets, or franchises, were it not for the permissive legislation of congress. . . . This section, then, of the Revised Statutes is the measure of the power of a state to tax national banks, their property, or their franchises. By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. Any state tax, therefore, which is in excess of, and not in conformity to, these requirements, is void."⁵

§ 582. Taxation of shares.

It follows that the personal property of the bank cannot be taxed; the only taxation to which it may be subjected, in addition to that on its real estate, is the tax on the shares of stock.⁶ These shares must be taxed to the owner, not to the

² Bank Tax Case, 2 Wall. 200, 17 L. ed. 793.

³ Van Allen v. Assessors, 3 Wall. 573, 18 L. ed. 229.

⁴ People v. Comrs., 4 Wall. 244, 18 L. ed. 344; Bradley v. People, 4 Wall. 459, 18 L. ed. 433; Davenport Nat. Bank v. Board of Equalization, 64 Ia. 140, 19 N. W. 889; St. Louis B. & S. Assoc. v. Lightner, 47 Mo. 393.

⁵ White, J., in Owensboro Nat. Bank v. Owensboro, 173 U. S. 664, 43 L. ed. 850.

⁶ First Nat. Bank v. Province, 20 Mont. 374, 51 Pac. 821; Cleveland Trust Co. v. Lander, 62 Oh. St. 266, 56 N. E. 1036.

bank;⁷ and shares in a national bank located in another State cannot be taxed in the hands of the owner.⁸

It is entirely within the power of a State in which the bank is situated to tax the shares where the bank is or where the owner lives; and the practice differs in different States. In several States resident owners are taxed on their shares where they reside, non-resident owners alone being taxed where the bank is located.⁹ On the other hand, the method commonly adopted is to tax all shareholders at the place where the bank is located.¹⁰

§ 583. Uniform taxation.

The earlier cases seem to have interpreted the section only as requiring that the rate of taxation should not be higher on national bank shares than on other moneyed capital;¹¹ but it was later held that the method of assessment and the exemptions must be uniform,¹² though subject to this requirement they are entirely within the control of the States.¹³ The rules as established by these authorities have been summed up as follows:

"1. That the words 'at a greater rate than is assessed upon

⁷ *De Baum v. Smith*, 55 N. J. L. 110, 25 Atl. 277; *Smalley v. Burlington*, 63 Vt. 443, 22 Atl. 611.

⁸ *Springfield v. First Nat. Bank*, 87 Mo. 441.

⁹ *Provident Institution v. Boston*, 101 Mass. 575, 3 A. R. 407; *Springfield v. First Nat. Bank*, 87 Mo. 441; *Clapp v. Burlington*, 42 Vt. 579, 1 A. R. 355; Md. 1902, ch. 468; R. I. Gen. L. ch. 45, § 15; Tenn. 1901, ch. 174, § 25.

¹⁰ Ind. Rev. Stat. of 1901, § 8470; Ind. 1903, ch. 29, § 30; La. Code, § 819; Kan. Gen. Stat. ch. 158, § 60; La. 1890, Act 106, § 27; N. Y. 1896, ch. 908, § 13; S. Car. Const. Art. 10, § 5; Utah Rev. Stat. § 2507; Va. Const. 1902, § 182; Wash. 1897, ch. 71, § 21; Wis. Rev. Stat. of 1898, § 1042.

¹¹ *People v. Comrs.*, 4 Wall. 244; 18 L. ed. 344; *Frazer v. Siebern*, 16 Oh. S. 615.

¹² *People v. Weaver*, 100 U. S. 539, 25 L. ed. 705; *Pelton v. Nat. Bank*, 101 U. S. 143, 25 L. ed. 901; *Cummings v. Nat. Bank*, 101 U. S. 153, 25 L. ed. 903; *Supervisors v. Stanley*, 105 U. S. 305, 26 L. ed. 1044; *Evansville Bank v. Britton*, 105 U. S. 323, 26 L. ed. 1053; *Cleveland Trust Co. v. Lander*, 62 Oh. St. 266, 56 N. E. 1036.

¹³ *Williams v. Supervisors*, 122 U. S. 154, 30 L. ed. 1088.

other moneyed capital in the hands of individuals citizens' refer to the entire process of assessment, which, in the case of national bank shares, includes both their valuation and the rate of percentage on such valuation; consequently, that the act of Congress is violated if, in connection with a fixed percentage applicable to the valuation alike of national bank shares and of other moneyed investments of capital, the State law establishes or permits a mode of assessment by which such shares are valued higher in proportion to their real value than is other moneyed capital.

"2. That a State law which permits individual citizens to deduct their just debts from the valuation of their personal property of every kind, other than national bank shares, or which permits the taxpayer to deduct from the sum of his credits, money at interest or other demands to the extent of his *bona fide* indebtedness, leaving the remainder to be taxed, while it denies the same right of deduction from the cash value of bank shares, operates to tax the latter at a greater value than other moneyed capital." ¹⁴

§ 584. Moneyed capital.

The "moneyed capital" intended is capital employed in banking or similar financial business. Bank stock need not be taxed in the same way as mercantile capital. "The main purpose of congress in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business, and operations and investments of a like character. The language of the act of congress is to be read in the light of this policy." ¹⁵

Therefore where by the State law *bona fide* debts are to be deducted from credits, there is nothing contrary to the act of

¹⁴ Harlan, J., in *Boyer v. Boyer*, 113 U. S. 689, 28 L. ed. 1089.

¹⁵ Matthews, J., in *Mercantile Bank v. New York*, 121 U. S. 138, 30 L. ed. 895.

Congress in holding that shares of stock in a national bank are not credits, and that the debts of owners of the stock are not to be deducted from the value of the stock.¹⁶ And this would seem to be the only sound interpretation, since a share in a corporation is not a debt of the corporation. In Iowa, however, it has been held that a share is a credit, and the owner is entitled to have subtracted from the value of it the amount of his *bona fide* debts.¹⁷

The business of a trust company is not that of banking, and shares in such a company, it is held, may be taxed differently from those of national banks.¹⁸

§ 585. Taxation of State banks.

Where State banks are specially taxed, it is usually done in substantial conformity with the national banking law; the shares being taxed to the owner, at the place where the bank is.¹⁹

In Quebec foreign banks pay a tax based on the capital, and an additional tax of \$100 for each agency in Montreal and Quebec, and \$20 for each other agency.²⁰ Similar provisions exist in other Provinces.

Under the Wisconsin act it was held that the real estate of a banking company is assessed to the corporation, and no deduction is made on account of such taxation from the value of the stock.²¹

¹⁶ *Commercial Nat. Bank v. Chambers*, 21 Utah, 324, 61 Pac. 560, 56 L. R. A. 346.

¹⁷ *First Nat. Bank v. Abia*, 85 Ia. 736, 52 N. W. 334.

¹⁸ *Jenkins v. Neff*, 163 N. Y. 320, 57 N. E. 408.

¹⁹ *Ariz. Rev. Stat. § 3838*; *Mich. Comp. L. § 3831*; *Miss. Code, § 3764*; *N. Mex. Comp. L. § 259*; *Wis. 1903, ch. 72, § 2*.

²⁰ *Que. 1895, ch. 15, amending Rev. Stat. Art. 1145*.

²¹ *Second Ward Sav. Bank. v. Milwaukee*, 94 Wis. 587, 69 N. W. 359.

CHAPTER XXV.

TAXATION OF SPECIAL CORPORATIONS: INSURANCE COMPANIES.

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| § 591. Scope of the chapter. | § 595. Combination of tax on receipts and license fees. |
| 592. Tax on receipts. | 596. Taxation of insurance companies in New York. |
| 593. Discriminating tax on receipts against foreign companies. | 597. Retaliatory taxes. |
| 594. Combination of ordinary tax and tax on receipts. | |

§ 591. Scope of the chapter.

The special forms of taxation of insurance companies, both domestic and foreign, are matters that fall rather outside the scope of a general treatise. No effort will be made in this chapter to assemble the taxation laws of all the States on this subject. It has rather been the object of the chapter to give the laws of certain important States, with types of other State laws, in order that the reader may obtain an idea of the ways in which such corporations have been taxed.

§ 592. Tax on receipts.

The commonest form of taxation of insurance companies is the levy of a certain percentage of the gross receipts from business done within the State by both domestic or foreign insurance companies. This tax is in some States one per cent. of the gross receipts;¹ in some one and a half per cent.,² two per cent.,³ or two and one-half per cent.⁴

The percentage is sometimes levied on the net receipts; thus two and a half per cent. of the net receipts deducting losses

¹ Ala. Civ. Code, § 3917.

² Dist. Col. Code, § 650; Ut. Rev. Stat. § 419.

³ Col. Stat. § 2212, amended 1895, p. 195, § 2; Minn. Stat. § 3192; Vt. Stat. § 579.

⁴ N. Dak. Code, § 3127a; Wyo. Rev. Stat. § 1770.

and commissions;⁵ two per cent. deducting losses and premiums returned.⁶ In New Mexico the net receipts are taxed "at the same rate that all other personal property is taxed."⁷ A similar method prevails in Oklahoma.⁸

In Rhode Island each domestic insurance company pays two per cent. of the gross premiums and assessments received within the State or within any other State which has not taxed the company; and a foreign insurance or surety company pays two per cent. of the gross premiums and assessments received within the State.⁹

In Quebec the tax is one per cent. on premiums of life insurance companies, $\frac{2}{3}$ of one per cent. on premiums of other insurance companies, but in no case less than \$250.¹⁰ In Ontario the tax is the same; but where a foreign life insurance company has \$100,000 or more invested in the Province and less than \$20,000 receipts it shall pay one per cent. on its gross premiums and one-fourth of one per cent. on its income from investments.¹¹

In several States the tax on receipts is in lieu of all other taxes, State, county or municipal.¹² Often this is subject to exception; as, except taxes upon real estate and license fees for agents;¹³ except taxes upon real estate, license fees, etc.;¹⁴ except license fees and taxes on real estate for all corporations, and taxes on personal property within the State of foreign corporations;¹⁵ except taxes on real or personal property and license fees.¹⁶

⁵ Ark. Stat. § 4123.

⁶ Ida. Rev. Stat. § 2233.

⁷ N. Mex. Comp. L. § 2131.

⁸ Okl. Stat. § 3054.

⁹ R. I. Gen. L. ch. 29, §§ 5, 6.

¹⁰ Que. 1900, ch. 13.

¹¹ Ont. 1899, ch. 8, § 2.

¹² Ark. Stat. § 4123; Ont. 1899, ch. 8, § 6.

¹³ Dist. Col. Code, § 650.

¹⁴ Ida. Rev. Stat. § 2233.

¹⁵ Minn. Stat. § 3192.

¹⁶ Wyo. Rev. Stat. § 1770.

In Utah it is provided that if any insurance company shall have paid a property tax during the year covered by said report, it shall be entitled to deduct from the tax herein provided the amount of such property tax paid for general State purposes.¹⁷

§ 593. Discriminating tax on receipts against foreign companies.

In several States a discrimination is made between the rate of taxation on receipts paid by domestic and by foreign companies. Thus in Iowa insurance companies incorporated outside the United States pay three and one-half per cent. on their gross receipts; within the State companies of other States pay two and one-half per cent. on such receipts; while Iowa companies pay one per cent. on their receipts deducting amounts paid for losses and premiums returned.¹⁸ This act, it is held, is not obnoxious to the constitutional provision for taxing the property of corporations like that of individuals, for the tax is not one upon property, but a franchise tax for the privilege of doing business in the State.¹⁹

In Kansas domestic companies pay two per cent. on their gross receipts and foreign companies four per cent.²⁰

In Massachusetts domestic insurance companies (except life insurance companies) pay one per cent. on gross receipts; but premiums received in other States where they are subject to a like tax shall not be so assessed.²¹ Similar companies chartered in other States pay two per cent. on their gross receipts.²² Similar companies chartered outside the United States pay four per cent.; "*provided*, that when the tax commissioner is satisfied that any such company has, during the whole term for which the tax is to be assessed, kept on deposit with the

¹⁷ Ut. Rev. Stat. § 421.

¹⁸ Ia. Code, § 1333.

¹⁹ *Manchester Fire Ins. Co. v. Herriott*, 91 Fed. 711; *Scottish Union & N. Ins. Co. v. Herriott*, 109 Ia. 606, 80 N. W. 665, 77 A. S. R. 548.

²⁰ Kan. Gen. Stat. §§ 3585, 3587.

²¹ Mass. Rev. L. ch. 14, § 26.

²² *Ibid.* § 27.

insurance or other department of any state of the United States, or in the hands of trustees, resident in and citizens of such states, for the general benefit and security of all policyholders residing in the United States, securities approved by the insurance commissioner of the value of two hundred thousand dollars, which have been at all times available for the payment of losses in this commonwealth, the tax upon the premiums of such company shall be assessed at the rate of two per cent."²³ Life insurance companies, whether domestic or foreign, pay one-quarter of one per cent. on the net value of all policies in force at the end of the preceding year issued or assumed by such company and held by residents of the Commonwealth.²⁴

In New Jersey, domestic life insurance companies pay $\frac{3}{4}\%$ of one per cent. on their total gross premiums, and one per cent. on their surplus.²⁵ Foreign life insurance companies are merely subject to a retaliatory tax.²⁶ Domestic insurance companies other than life, pay a franchise tax of one per cent. on their gross receipts;²⁷ while similar foreign companies pay 2% on their gross receipts within the State.²⁸

In Pennsylvania domestic insurance companies (except purely mutual and beneficial associations) pay a tax of eight mills on the dollar on the gross amount of premiums received from business transacted within the State.²⁹ In the case of fire and marine insurance companies the rate shall be three mills on each dollar of the actual value of the whole capital stock.³⁰ Foreign insurance companies pay a tax of two per cent. on all premiums received from business done within the State.³¹

²³ *Ibid.* § 29.

²⁴ *Ibid.* § 24.

²⁵ N. J. Gen. Stat. p. 1780, § 184.

²⁶ *Ibid.* § 183.

²⁷ *Ibid.* p. 3337, § 260.

²⁸ *Ibid.* p. 1744, § 3.

²⁹ Pa. 1889, P. L. p. 433, § 24; 1895, P. L. p. 408, § 1.

³⁰ Pa. P. L. 1893, p. 353, § 1.

³¹ Pa. 1873, P. L. p. 26, § 10; 1889, P. L. p. 420, § 24.

§ 594. Combination of ordinary tax and tax on receipts.

In several States there is a combination of the ordinary corporation tax and the tax on receipts. Thus in California foreign insurance companies other than life pay two per cent. of the gross premiums upon business done in the State.³² Other companies pay no different tax from ordinary corporations. In Connecticut foreign insurance companies pay two per cent. on their gross premiums received from business done in the State.³³ Domestic stock companies are taxed like other corporations. Domestic mutual companies are taxed on their assets, deducting ascertained and unpaid losses, real estate (which is taxed separately), and bonds which are exempt. Mutual fire companies pay three-fourths of one per cent. and mutual life companies one-fourth of one per cent. on the balance. This is in lieu of all taxes except on real estate.³⁴

In Illinois domestic insurance companies are taxed like other corporations;³⁵ but foreign insurance companies are taxable upon their gross receipts. "Every insurance company or association, other than life, organized or incorporated under the laws of any other state or nation, and every other insurance company, other than life, whose charter may be owned, or a majority of whose stock may be controlled, or whose business shall be carried on in the interest or for the benefit of any insurance company or association incorporated under the laws of any other state or nation, shall at the time of making the annual statements as required by law, pay to the insurance superintendent as taxes, two per cent. of the gross amount of premiums received by it for business done in this state, including all insurance upon property situated in this state, during the preceding calendar year. The payment of said taxes shall be a condition precedent to the privilege of doing business in this state. Upon compliance with the laws of this state and

³² Cal. Polit. Code, § 622a.

³³ Conn. Gen. Stat. § 2452.

³⁴ *Ibid.* §§ 2444-2447.

³⁵ Ill. Rev. Stat. ch. 120, §§ 13, 33.

the payment of said taxes, the insurance superintendent shall issue the annual certificate as provided by law, and the taxes provided in this act shall be in full for all taxes, state and local, against such corporations or associations, except taxes on real estate, and such reciprocal tax as is required by law; *provided*, where fire insurance companies pay into cities and villages, that have an organized fire department, a tax of two dollars or less, on every \$100 of premiums received by the company, in such city or village, said amount shall be deducted from the amount to be paid to the insurance superintendent by provisions of this act."³⁶ This tax "is both a license fee for doing business in this state and a state tax, and evidently has the effect, if the act is constitutional, of superseding the tax on net receipts and all personal property taxes, except as otherwise provided in the act itself, notwithstanding the later act does not contain any repealing clause."³⁷

So far as this is a restraint on local taxation it is unconstitutional.³⁸

In Nebraska fire insurance companies are taxed upon the gross receipts as upon ordinary property, as are fraternal and other insurance companies not carried on for profit; life, accident, and surety companies pay a tax of two per cent. of the gross receipts from business done within the State.³⁹ But this has been held not to be in lieu of but in addition to taxation of their tangible property.⁴⁰

In Ohio domestic insurance companies are taxed like ordinary corporations.⁴¹ Foreign companies pay the same tax upon all their property within the State,⁴² and also a franchise tax of two and a half per cent. on their gross receipts in the State, deducting "in the case of regular companies, wherein

³⁶ *Ibid.* ch. 73, § 30.

³⁷ Carter, J., in *Raymond v. Hartford Ins. Co.*, 196 Ill. 329, 63 N. E. 745.

³⁸ *Raymond v. Hartford Fire Ins. Co.*, 196 Ill. 329, 63 N. E. 745.

³⁹ Neb. 1903, ch. 73, §§ 58-61.

⁴⁰ *State v. Fleming*, (Neb.) 97 N. W. 1063.

⁴¹ Oh. Rev. Stat. § 2744.

⁴² *Western Assur. Co. v. Halliday*, 127 Fed. 830.

policy holders participate in the surplus and earnings of the company, dividends or surplus from previous payments allowed and used in the payment of current premiums, cancellation or surrender values, and commission paid to the citizens of this state, during the same period for which receipts are reported.”⁴³

In Vermont a life insurance company incorporated under the laws of this State shall in addition to the tax assessed by the second preceding section pay a tax to the State which is hereby assessed at the rate of one per cent. on the total admitted assets of such company after deducting therefrom the necessary reserve on all existing policies computed according to the laws of this State and certified to the commissioner of State taxes by the insurance commissioners; the reserve actually set apart by said company to fulfil the terms of any policy or contract of insurance providing for an annuity, life rate endowment, or trust fund; the value of all its real estate situated in this state or elsewhere upon which said company pays taxes to the town, city or county wherein it is located; all unadjusted death claims, matured endowments, non-forfeited cash surrender values, dividends, and annuity payments, accrued but not paid; premiums paid in advance; taxes assessed upon real estate but not paid; taxes on premiums accrued but not paid; and all other accrued liabilities including current expenses.⁴⁴

In West Virginia domestic insurance companies are assessed upon their property like other owners of property; but stock notes of such companies are not assessed. Foreign insurance companies pay an annual license tax as follows: fire insurance companies, one-fourth of one mill on each dollar; life and accident insurance companies, one and one-half mills on each dollar; other insurance and guaranty companies, one-tenth of one mill on each dollar.⁴⁵

⁴³ Oh. Rev. Stat. § 2745; not unconstitutional, because not an additional tax on property but a franchise tax, *Western Assur. Co. v. Halliday*, *supra*.

⁴⁴ Vt. Stat. 1902, Act 20, § 38.

⁴⁵ W. Va. Code, ch. 34, §§ 6, 13.

§ 595. Combination of tax on receipts and license fees.

In North Carolina the tax is as follows:

"The officer authorized to collect the tax on insurance, bond and investment companies, associations or orders, shall collect and pay into the State Treasury charges, fees and taxes as follows: For each license issued to a life insurance company or association, \$250.00; for each license issued to a fire insurance company or association or to any company or association of companies operating a separate or distinct plant of agencies, \$200.00; for each license issued to an accident insurance company or association, \$200.00; for each license issued to a marine insurance company or association, \$200.00; for each license issued to a surety insurance company or association, \$100.00; for each license issued to a plate glass insurance company or association, \$100.00; for each license issued to a boiler insurance company or association, \$100.00; for each license issued to a domestic mutual insurance company, \$50.00; for license issued to a domestic mutual insurance company, operating in not more than two counties, \$10.00; for license issued to a fraternal order, \$25.00; for license issued to a bond, investment, dividend, guarantee, registry, title guarantee or debenture company, \$100.00; for each license issued to all other insurance companies or associations, \$100.00. All of said companies shall pay a tax of $2\frac{1}{2}$ per centum upon the amount of their gross receipts in this State; *Provided*, that if any general agent shall file with the Insurance Commissioner a sworn statement showing that at least one-fourth of the entire assets of his company, when his company has assets, are invested in and are maintained in any or all of the following securities or property, viz.: bonds of this State, or of any county, city or town of this State, or any property situated in this State and taxable therein, then the tax shall be one per centum upon the gross receipts aforesaid, and the license fee shall be one-half that named above, and if the amount so invested shall be three-fourths of the total assets, the tax shall be one-fourth of one per centum and the license fee one-fourth of that named above. Companies paying the

taxes levied in this section shall not be liable for tax on their capital stock, and no county or corporation shall be allowed to impose any additional tax, license or fee. The license fees and taxes imposed in this section shall be paid to the Insurance Commissioner, and by him paid into the State Treasury, as required by law."⁴⁶

In New Brunswick fire insurance companies pay one per cent. of the net premiums received, together with \$100 by each foreign company. Foreign life insurance companies pay two hundred and fifty dollars, and domestic companies one hundred dollars. Accident and guarantee companies pay twenty-five dollars and one-half of one per cent. on premiums received in respect of insurance in the Province.⁴⁷

All special or travelling agents of a life insurance company (except such as shall have resided in the Province one year before being so employed) shall pay an annual tax of one hundred dollars.⁴⁸ Any general agent of a life insurance company whose territory includes New Brunswick, but who resides outside the Province, shall pay an annual tax of ten dollars.⁴⁹ Each life insurance company shall pay a license fee of two dollars for each agent.⁵⁰

§ 596. Taxation of insurance companies in New York.

In New York insurance companies are taxed like ordinary corporations locally, and upon their gross receipts by the State, under the following provisions: "An annual state tax for the privilege of exercising corporate franchises or for carrying on business in their corporate or organized capacity within this state equal to one per centum on the gross amount of premiums received during the preceding calendar year for business done in this state, whether such premiums were in the

⁴⁶ N. Car. Machinery Act of 1903, § 68.

⁴⁷ N. B. 1892, ch. 4, § 1, cl. 2, 3, 4.

⁴⁸ *Ibid.* ch. 5, § 1.

⁴⁹ N. B. 1896, ch. 34, § 6.

⁵⁰ *Ibid.* § 7.

form of money, notes, credits, or any other substitute for money, shall be paid annually into the treasury of the state, on or before the first day of June by the following corporations:

"1. Every domestic insurance corporation, incorporated, organized or formed under, by, or pursuant to a general or special law;

"2. Every insurance corporation, incorporated, organized or formed under, by, or pursuant to the laws of any other state of the United States, and doing business in this state, except a corporation doing a fire insurance business or a marine insurance business;

"3. Every insurance corporation, incorporated, organized or formed under, by, or pursuant to the laws of any state without the United States, or of any foreign country, except such a corporation doing a life, health or casualty insurance business, and doing business in this state; but the tax on gross premiums of a corporation so incorporated, organized or formed and doing a fire or marine insurance business within the state shall be equal to five-tenths of one per centum. This section does not apply to a fraternal beneficiary society, order or association, a corporation for the insurance of domestic animals, a town or county co-operative insurance corporation, nor to any corporation subject to the supervision of or required by or in pursuance of law to report to the superintendent of banks; but this section does apply to an individual, or partnership, or association of underwriters known as Lloyds, in so far as corporations doing the same kind of insurance business are subject to its provisions. The taxes imposed by this section shall be in addition to all other fees, licenses or taxes imposed by this or any other law, except that in assessing taxes under the reciprocal provisions of section thirty-three of chapter thirty-eight of the general laws, credit shall be allowed for any taxes paid under this section."⁵¹

The excepted corporations pay a franchise tax of two per

⁵¹ N. Y. 1901, ch. 118, § 1.

cent. on their gross receipts, with deductions for similar taxes paid in other States.⁵²

§ 597. Retaliatory Taxes.

In several States there is a retaliatory provision, by virtue of which foreign insurance companies pay at least as much as in the State which chartered them similar corporations of the State itself would pay.⁵³ Such a provision is not unconstitutional.⁵⁴

⁵² N. Y. Rev. Stat. ch. 38, § 34.

⁵³ California Polit. Code, § 622; Conn. Gen. Stat. § 2450; Del. 1899, ch. 166, § 9; Mass. Rev. L. ch. 14, §§ 27, 28; Neb. Comp. L. ch. 43, § 33; N. J. Rev. Stat. p. 1780, § 183; p. 1745, § 10; N. Y. Rev. Stat. ch. 38, § 33; Oh. Rev. Stat. § 2745; Okl. Stat. § 3051; and see *ante*, Chap. VII.

⁵⁴ *State v. Insurance Co.*, (Neb.) 99 N. W. 36.

CHAPTER XXVI

TAXATION OF SPECIAL CORPORATIONS: PUBLIC SERVICE COMPANIES.

§ 601. Alabama.	§ 626. New Hampshire.
602. Arizona.	627. New Jersey.
603. Arkansas.	628. New Mexico.
604. California.	629. New York.
605. Colorado.	630. North Carolina.
606. Connecticut.	631. North Dakota.
607. Delaware.	632. Ohio.
608. Florida.	633. Oklahoma.
609. Georgia.	634. Oregon.
610. Idaho.	635. Pennsylvania.
611. Illinois.	636. Rhode Island.
612. Indiana.	637. South Carolina.
613. Iowa.	638. South Dakota.
614. Kansas.	639. Tennessee.
615. Kentucky.	640. Texas.
616. Louisiana.	641. Utah.
617. Maine.	642. Vermont.
618. Maryland.	643. Virginia.
619. Massachusetts.	644. Washington.
620. Michigan.	645. West Virginia.
621. Minnesota.	646. Wisconsin.
622. Mississippi.	647. Wyoming.
623. Missouri.	648. New Brunswick.
624. Montana.	649. Ontario.
625. Nebraska.	650. Quebec.

§ 601. Alabama.

The roadbed, track, and other property, real and personal, of all railroads are taxable.¹ This shall be valued like any other property; that is, the valuation "shall be had exclusively upon the consideration of what a clear fee-simple title thereto

¹ Ala. Civ. Code, § 3911, cl. 12.

would sell for under the conditions under which that character of property is most usually sold." ²

Every telegraph company doing business between points wholly within the State shall pay a privilege tax based on the mileage of line operated within the State; each company whose lines within the State do not exceed 150 miles, one dollar per mile; each company whose lines exceed 150 miles pay \$500, besides one dollar per mile. No telegraph company which has paid this privilege tax shall be liable to pay an additional privilege tax or any other tax in the State except licenses required by cities and towns, and except upon its real estate, fixtures and other local property, which shall be subject to taxation as other property in the State.³

Express companies doing business between points wholly within the State pay a privilege tax based on the mileage of railroad operated; each company whose lines within the State do not exceed 500 miles, one dollar per mile; 500 to 1,000 miles, \$1,000; 1,000 to 2,000 miles, \$2,000; 2,000 to 3,000 miles, \$3,000; 3,000 to 4,000 miles, \$4,000; more than 4,000 miles, \$5,000. No express company which has paid the privilege tax shall be liable to any other tax except on its real estate and local property.⁴ Sleeping car companies pay \$500 and one dollar for each mile of railroad over which their cars run, with a similar exemption from other taxes.⁵ Gas works, electric light companies, telephone companies, street railways, toll-bridges and ferries are taxed on their gross incomes, at the rate that property is taxed.⁶

§ 602. Arizona.

The property of railroads is assessed by a Territorial Board of Equalization, to which each railroad makes a return show-

² *Ibid.* § 3972.

³ *Ibid.* § 3913.

⁴ *Ibid.* § 3914.

⁵ *Ibid.* § 3915.

⁶ *Ibid.* § 3912, cl. 3.

ing the length of road, number and value of locomotives and cars, and proportion of cars used within the Territory.⁷

Telegraph lines are assessed the same as real estate in each county, as a whole, without separating the land and franchise, improvements and property, either in the description or valuation of the same.⁸

§ 603. Arkansas.

The property of a railroad consisting of the right of way, tracks, and everything appurtenant thereto shall be valued, taking into consideration the entire right of way given by the charter or statutes. All the movable property shall be regarded as rolling stock. The railroad sets a value on its property, which is passed upon by the railroad commissioners. The total value is then divided by the number of miles of track, and the result is the valuation per mile. All other personal property other than rolling stock and all real estate not connected with the right of way are valued and taxed locally.⁹

Sleeping car companies, express companies and telegraph companies make returns showing the total value of their capital stock, the number of miles operated in the State, and the total miles operated; and they are taxed on that proportion of their capital stock that the mileage in the State bears to the total mileage; and the amount is distributed to the counties in the same proportion.¹⁰

§ 604. California.

All telegraph and telephone lines shall be described in the same manner as real estate is described, but assessed as personal property by the assessor of the county, at a rate per mile for that portion of such property as lies within his county.¹¹

⁷ Ariz. Rev. Stat. § 3858.

⁸ *Ibid.* § 3854.

⁹ Ark. Stat. §§ 6466-6475.

¹⁰ *Ibid.* §§ 6455-6457.

¹¹ Cal. Polit. Code, § 3663.

Railroads are taxed like other corporations, except for the special provisions as to assessment.

"The State Board of Equalization must meet at the State capitol on the third Monday in July, and continue in open session from day to day, Sundays excepted, until the first Monday in August. At such meetings the board must assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county, but franchises derived from the United States shall not be assessed. Assessments must be made to the corporation, person, or association of persons owning the same. . . . The depots, stations, shops, and buildings erected upon the space covered by the right of way, and all other property owned by such person, corporation, or association of persons, are assessed by the assessor of the county wherein they are situate. Within twenty days after the first Monday of August, the board must apportion the total assessment of the franchise, roadway, roadbed, rails, and rolling stock of each railway to the counties, or cities and counties, in which such railway is located, in proportion to the number of miles of railway laid in such counties, and cities and counties. . . . All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes, as the property of individuals within such . . . taxation districts." ¹²

§ 605. Colorado.

The State Board of Equalization assesses at the full cash value all the property, tangible or intangible, in the State used or controlled by railway companies, telegraph, telephone, palace car, sleeping car, fast freight and express companies; except that real estate of railways not used for the operation of the road is assessed locally.¹³

Returns are to be made by the railways,¹⁴ telegraph and

¹² *Ibid.* § 3665.

¹³ Col. 1902, ch. 3, § 86.

¹⁴ *Ibid.* § 95.

telephone companies,¹⁵ express, fast freight, and palace and sleeping-car companies;¹⁶ and the board assesses the property as within the State in proportion to the mileage.¹⁷

§ 606. Connecticut.

The Board of Equalization values the capital stock (the railroad making a full statement of condition) and the bonds of the company. The railroad pays in lieu of all other taxes on its franchise, debt and property (except real estate not used for railroad purposes) one per cent. of the valuation of its capital stock, and one per cent. of the par value (or the actual market value, if that is less) of its bonds; deducting the amount paid on its real estate not used for railroad purposes. Where part only of the railroad is within the State, it pays such proportion of this amount as the miles within the State bear to the total mileage.¹⁸

Express companies pay five per cent. on their gross receipts within the State in lieu of all other taxes.¹⁹ Telegraph companies pay twenty-five cents per mile of wire, in lieu of all other taxes except upon real estate.²⁰ Telephone companies pay seventy cents on each transmitter used and twenty-five cents on each mile of wire, in lieu of all other taxes except on real estate.²¹

§ 607. Delaware.

Public-service companies hereafter specified file an annual report showing their gross receipts. The tax is provided as follows:²²

That each telegraph, telephone, cable, and express corporation shall pay to the State Treasurer for the use of the State,

¹⁵ *Ibid.* § 97.

¹⁶ *Ibid.* §§ 100, 101.

¹⁷ *Ibid.* §§ 105, 106.

¹⁸ Conn. Gen. Stat. §§ 2423-2425.

¹⁹ *Ibid.* § 2433.

²⁰ *Ibid.* § 2437.

²¹ *Ibid.* § 2439.

²² Del. 1901, ch. 15 (Franchise Tax Law), § 4.

an annual license fee or franchise tax at the rate of one per centum upon the gross amount of its receipts so returned or ascertained; that each corporation organized for the distribution of electricity, heat or power, or organized for the purpose of producing or distributing steam, heat or power, or organized for the purpose of the production, distribution or sale of gas shall pay to the State Treasurer, for the use of the State, an annual license fee or franchise tax at the rate of two-fifths of one per centum upon the gross amount of its receipts so returned or ascertained, and four per centum upon the dividends in excess of four per centum so paid or declared by any such corporation; that each oil or pipe line corporation shall pay to the State Treasurer, for the use of the State, an annual license fee or franchise tax at the rate of three-fifths of one per centum upon the gross amount of its receipts so returned or ascertained; that each parlor, palace, or sleeping car corporation shall pay to the State Treasurer, for the use of the State an annual license fee or franchise tax at the rate of one and one-half per centum upon the gross amount of its receipts so returned or ascertained; if any oil or pipe line corporation has part of its transportation line in this State and part thereof in another State or other States, such corporation shall return a statement of its gross receipts for transportation of oil or petroleum over its whole line, together with a statement of the whole length of its line, and the length of its line in this State; such corporation shall pay an annual license fee or franchise tax to the State Treasurer, for the use of the State, at the aforesaid rate upon such proportion of its said gross receipts as the length of its line in this State bears to the whole length of its line.

§ 608. Florida.

A railroad company whose track or roadbed or any part of it is within the State makes a return to the comptroller stating the total length of the railroad; the total length of the main line, lots and terminal facilities in the State and in each county;

the number and value of all locomotive engines, cars of all sorts, and appurtenances. The value of the personal property is then apportioned to each mile of track, and the track and personal property within each local taxing district is there assessed and taxed like the property of individuals.

Every telegraph line in the State "and its properties, rights and franchises of every kind in this State" is returned and assessed like the property of railroads.²³

"Any express company doing business in this State shall pay a State license tax of fifteen hundred dollars per annum and no county license."²⁴ "Every telegraph company doing business in this State shall . . . pay to the comptroller a license tax at the rate of fifty dollars for every one hundred miles of telegraph lines operated by said company in this State, in lieu of all other license taxes." "Electric light, water-works, gas light and telephone companies shall each pay, on every plant, to the tax collector of each county where such plant is located and operated, a license tax of one hundred dollars; *provided*, telephone lines of less than twenty-five miles in length shall pay a license tax of twenty-five dollars."²⁵

§ 609. Georgia.

The property of railroad companies is assessed under special rules. The value of the property within the State, for State taxation, is found by adding to the entire value of the fixed property that proportion of the value of the entire rolling-stock which the length of railroad in the State bears to the whole length.²⁶ For county and municipal taxes, there is added to the fixed property that proportion of the value of rolling-stock within the State which the fixed property within the local district bears to the whole amount of fixed property within the State.²⁷

²³ Fla. Rev. Stat. Append. ch. 4010, § 49.

²⁴ *Ibid.* § 10.

²⁵ *Ibid.*

²⁶ Ga. Code, § 779.

²⁷ *Ibid.* §§ 725, 726, 785, 786.

§ 610. Idaho.

Railroad and telegraph and telephone lines are assessed by the State Board of Equalization, after returns showing miles of line, stations and rolling stock and number of instruments; and the railroad or telegraph company then pays a tax, fixed at a certain rate per mile by the State Board. All property, however, owned by the company but not used in its business is taxed in the ordinary way.²⁸

§ 611. Illinois.

Public service companies are taxed like all corporations. The tangible property is assessed locally, and the whole property, tangible and intangible, including the franchise, is then assessed by the State Board of Equalization, correcting the local assessment.²⁹

§ 612. Indiana.

Telegraph and telephone companies, express companies, sleeping car companies or companies using other special cars, and pipe line companies doing business in the State, whether domestic or foreign corporations, file annual returns showing:

First. The total capital stock of such association, company, co-partnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding, and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation and subject to local taxation within the State, and the location and assessed value thereof in each

²⁸ *Ida. Polit. Code*, §§ 1357-1364.

²⁹ *Ill. Rev. Stat. ch. 120*, §§ 17, 33.

county or township where the same is assessed for local taxation.³⁰

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situate outside the State of Indiana and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the dates and amounts thereof.³¹

Eighth.³² (a). The total length of the lines of said association or company.

(b). The total length of so much of their line as is outside the State of Indiana.

(c). The length of the lines within each of the counties and townships within the State of Indiana.³³

The State Board of Tax Commissioners then value and assess the property of these corporations as follows: "Said State Board of Tax Commissioners shall first ascertain the true cash value of the entire property owned by said association, company, copartnership or corporation from said statements, or otherwise, for that purpose taking the aggregate

³⁰ In the case of express companies having no capital stock, the manner in which the stock is held and its value.

³¹ In the case of sleeping-car companies and pipe lines, the names and residences of the holders of the mortgages are to be given.

³² In the case of pipe lines, instead of the eighth item is the following: "Eighth. A schedule of all other property owned by said associations, companies, copartnerships or corporations other than real estate, located without the State of Indiana, and the assessed value thereof, if any; also a schedule of all other property, including the length, size and value of lines, tanks and capacities thereof, and all other property owned by said associations, companies, copartnerships or corporations, other than real estate, as set out in clause fifth of this section, located within the State of Indiana, with the location and value thereof."

³³ Ind. Rev. Stat. of 1901, §§ 8478, 8479, 8480, 8481, 8481 a.

value of all the shares of capital stock in case such shares have a market value, and in case they have none, taking the actual value thereof, or the capital of said association, company, copartnership or corporation in whatever manner the same is divided in case no shares of capital stock have been issued: *Provided*, however, That in case the whole or any part of the property of such association, company, copartnership or corporation shall be encumbered by a mortgage or mortgages, such board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock, or to the value of the capital, in case there shall be no such shares, the aggregate amounts of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such corporation. Such Board of Tax Commissioners shall, for the purpose of ascertaining the true cash value of the property within the State of Indiana, next ascertain from such statements, or otherwise, the assessed value for taxation in the localities where the same is situated, of the several pieces of real estate situate without the State of Indiana, and not specifically used in the general business of such association, company, copartnership or corporation; which said assessed values for taxation shall be by said board deducted from the gross value of the property, as above ascertained. Said State Board of Tax Commissioners shall next ascertain and assess the true cash value of the property of such associations, companies, copartnerships, corporations or persons within the State of Indiana, by taking the proportion of the whole aggregate value of said associations, companies, copartnerships, corporations or person, as above ascertained, after deducting the assessed value of such real estate without the State, which the length of lines of said associations, companies, copartnerships, corporations or person in the case of telegraph and telephone companies within the State bears to the total length of lines thereof, and in the case of palace, drawing-room, sleeping, dining, chair car, oil car, refrigerator car companies, and companies owning cars for the transmission of fast freight, horses,

cattle, hogs, sheep, or any other freight of any description, the proportion shall be the proportion of such aggregate value of such deductions, which the length of lines within the State over which said cars are run bears to the length of the whole lines over which said cars are run, and in the case of express companies the proportion shall be in the proportion of the whole aggregate value after such deductions, which the length of lines or routes within the State of Indiana bears to the whole length of the lines or routes of such associations, companies, copartnerships or corporations, and in the case of pipe line companies the proportion shall be that proportion of the whole aggregate length, size and value of its pipe lines and other property, after such deductions, which the length, size and value of the said pipe lines and other property within the State of Indiana bears to the whole length, size and value of the said line and other property of such association, and such amount so ascertained shall be deemed and held as the entire value of the property of said associations, companies, copartnerships or corporations within the State of Indiana. From the entire value of the property within the State so ascertained there shall be deducted by the said board the assessed value for taxation of all the real estate, structures, machinery and appliances within the State and subject to local taxation in the counties and townships, as hereinbefore described in item No. 5 of sections 1, 2, 3, 4 and 4½ of this act, and the residue of such value so ascertained, after deducting therefrom the assessed value of such local properties, shall be by said board assessed to said association.

"The State Board of Tax Commissioners, in the case of pipe line associations, companies, copartnerships or corporations, shall distribute and apportion to the different counties, townships, cities or towns such residue, in the proportion that the length, size and value of the lines in each of said counties, townships, cities or towns, bears to the total assessed value in the State."²⁴

²⁴ *Ibid.* § 8484.

This provision has been held constitutional.³⁵

"Said State Board of Tax Commissioners shall thereupon ascertain the value per mile of the property within the State by dividing the total value, as above ascertained, after deducting the specific properties locally assessed within the State, by the number of miles within the State, and the result shall be deemed and held as the value per mile, of the property of such association, company, copartnership or corporation within the State of Indiana."³⁶

"Said State Board of Tax Commissioners shall thereupon, for the purpose of determining what amount shall be assessed by it to said association, company, copartnership or corporation in each county in the State through, across, into or over which the line of said association, company, copartnership or corporation extends, multiply the value per mile, as above ascertained by the number of miles in each such counties, as reported in said statements or as otherwise ascertained, and the result thereof shall be, by said Board, certified to the Auditor of State, who shall thereupon certify the same to the Auditors, respectively, of the several counties through, into, over or across which the lines or routes of said association, company, copartnership or corporation extend, and such Auditors shall apportion the amount certified for their counties, respectively, among the several townships into, through, over or across which such lines or routes extend, in proportion to the length of the lines in such townships."³⁷

"Said board shall also assess the railroad property, denominated in this act as 'railroad track' and 'rolling stock,' at its true cash value, and said board is hereby given the power and authority, by committee or otherwise, to examine persons or papers. The amounts so determined and assessed shall be certified by the Auditor of State to the County Auditors of the

³⁵ *Western U. T. Co. v. Taggart*, 141 Ind. 281, 40 N. E. 1051, 60 L. R. A. 671.

³⁶ Ind. Rev. Stat. of 1901, § 8485.

³⁷ *Ibid.* § 8486.

proper counties. The County Auditor shall, in like manner, distribute the value so certified to him by the Auditor of State to the several townships, cities and towns in his county, entitled to a proportionate value of such railroad track and rolling stock; and said Auditor shall compute and extend taxes against such value the same as against other property in such townships, cities and towns." ²⁸

When a railroad runs into or through two or more States, its value for taxation purposes, in each, is fairly estimated by taking that part of the value of the entire road which is measured by the proportion of the length of the particular road in that State to that of the whole road. ²⁹

§ 613. Iowa.

The property of railroad corporations is assessed by the Executive Council. For this purpose the railroad makes annual returns. The Council then find the actual value of the property within the State, considering these returns and other information, "also taking into consideration the valuation of all property of such companies, including franchises and the use of the property in connection with lines outside the State, and making such deductions as may be necessary on account of extra value of property outside the State as compared with the value of property in the State, in order that the actual cash value of the property of the company within this State may be ascertained; and after finding the actual cash value of the property of the company within this State, it shall deduct from the total amount of same the actual value of the property belonging to the company assessed for taxation in local taxing districts in this State, and shall assess the property of such company at its taxable value as thus found."

²⁸ *Ibid.* § 8555.

²⁹ *Pittsburg, C. C. & S. L. Ry. v. Backus*, 154 U. S. 421, 38 L. ed. 1031, affirming *Pittsburg, etc., Ry. Co. v. Backus*, 133 Ind. 625, 33 N. E. 432; *Cleveland, C. C. & S. L. R. R. v. Backus*, 133 Ind. 513, 33 N. E. 421, 18 L. R. A. 729.

The Council also determine the rate, which is equal as nearly as possible to the average rate of taxes in the State.⁴⁰

§ 614. Kansas.

A Board of Assessment, consisting of the lieutenant-governor, secretary of state, treasurer, auditor and attorney-general assess the property of railroad companies, except land and buildings outside the location, which are assessed locally.⁴¹ The railroad makes returns of its property⁴² and all the property used for operating the road is assessed by the board at its actual value in money,⁴³ and the board apportion the property assessed among the counties.⁴⁴

The property of telegraph and telephone companies is assessed in the same way, the board being guided by the value of such property as compared with the value of other personal property in the State.⁴⁵

§ 615. Kentucky.

The provisions for taxing the franchise of certain corporations are these:

"Every railway company or corporation and every incorporated bank, trust company, guaranty or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation, or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or perform-

⁴⁰ Ia. Code of 1897, §§ 1330, 1331.

⁴¹ Kan. Gen. Stat. ch. 158, § 98.

⁴² *Ibid.* § 103.

⁴³ *Ibid.* § 101.

⁴⁴ *Ibid.* § 110.

⁴⁵ *Ibid.* § 117.

ing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district where its franchise may be exercised.”⁴⁶

There then follow provisions for filing a statement.

“Where the line or lines of any such corporation, company, or association extend beyond the limits of the state or county, the statement shall, in addition to the other facts hereinbefore required, show the length of the entire lines operated, owned, leased, or controlled in this state, and in each county, incorporated city, town, or taxing district, and the entire line operated, controlled, leased, or owned elsewhere. If the corporation, company, or association be organized under the laws of any other state or government, or organized and incorporated in this state, but operating and conducting its business in other states as well as in this state, the statement shall show the following facts, in addition to the facts hereinbefore required: The gross and net income or earnings received in this state and out of this state, on business done in this state, and the entire gross receipts of the corporation, company, or association in this state and elsewhere during the twelve months next before the 15th day of September of the year in which the assessment is required to be made. In cases where any of the facts above required are impossible to be answered correctly, or will not afford any valuable information in determining the value of the franchises to be taxed, the said board may excuse the officer from answering such questions: *Provided*, That said board, from said statement, and from such other evidence as it may have, if such corporation, company, or association be organized under the laws of this state, shall fix the value of the capital stock of the corporation, company, or association, as provided in the next succeeding section, and from the amount thus fixed shall deduct the assessed value of all tangible property as-

⁴⁶ Ky. Stat. § 4077.

sessed in this state, or in the counties where situated. The remainder thus found shall be the value of its corporate franchise subject to taxation as aforesaid." ⁴⁷

"If the corporation, company or association be organized under the laws of any other State or government, except as provided in the next section, the board shall fix the capital stock as hereinbefore provided, and will determine from the amount of the gross receipts of such corporation, company or association in this State and elsewhere the proportion which the gross receipts in this State, within twelve months next before the fifteenth day of September of the year in which the assessments were made, bears to the entire gross receipts of the company, the same proportion of the value of the entire capital stock, less the assessed value of the tangible property assessed, or liable to assessment in this State, shall be the correct value of the corporate franchise of such corporation, company or association for taxation in this State." ⁴⁸

"If the corporation organized under the laws of this State or of some other State government be a railroad, telegraph, telephone, express, sleeping, dining, palace or chair-car company, the lines of which extend beyond the limits of the State, the said board will fix the value of the capital stock as hereinbefore provided, and that proportion of the value of the capital stock, which the length of the lines operated, owned, leased or controlled in this State bears to the total length of the lines owned, leased, or controlled in this State and elsewhere shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town or district through or into which such lines pass or are operated in the same proportion that the length of the line in such county, city, town or district bears to the whole length of lines in this State." ⁴⁹

⁴⁷ *Ibid.* § 4079.

⁴⁸ *Ibid.* § 4080.

⁴⁹ *Ibid.* § 4081. See *Jefferson County v. Board of Valuation*, 78 S. W. 443.

These special taxes are, it is held, not to be assessed on the property of ordinary corporations, but only on such corporations as have a special franchise, which enables them to do what individuals could not do. "The corporate property sought by this statute to be subjected to taxation may be said to be the added value which the exercise by the corporation of any special or exclusive privilege or franchise not allowed by law to natural persons gives to the tangible property. For example, a railroad track, without the right of operating a railroad, would be of small value; with that right, it might be worth millions of dollars."⁵⁰

In fixing the value of the capital stock, it is proper to consider the net income of the company; and "the more certain and fixed that income is, the more it should weigh in determining the value of its franchise."⁵¹

The fact that the franchise has been taxed does not prevent taxation of the tangible property locally;⁵² and in fact neither the property nor (where it is taxable) the franchise can be left untaxed locally, as that would be contrary to the constitutional provisions for proportional taxation.⁵³

§ 616. Louisiana.

The real estate, roadbeds, roads, iron, track, superstructures, excavations and channels of railroads, canals, and other transportation or telegraph companies, shall be assessed and taxed in the parish or assessment district where located; and all other property not specially exempted from taxation by article 207 of the Constitution belonging to said railroads, canals, etc., shall be assessed at the domicile or principal office of said railroads, canals, etc., as contemplated by Article 245 of the Constitution; but the rolling stock or movable property of any

⁵⁰ Louisville Tobacco Warehouse Co. v. Com., 106 Ky. 165, 49 S. W. 1069.

⁵¹ Henderson Bridge Co. v. Negley, 63 S. W. 989.

⁵² Louisville & N. R. R. v. Com., 85 Ky. 198, 3 S. W. 139; Kenton Ins. Co. v. Covington, 86 Ky. 213, 5 S. W. 461.

⁵³ South Covington & C. St. Ry. v. Bellevue, 105 Ky. 283, 49 S. W. 23.

railroad company, telegraph company, canal company or other transportation company, whose line lies partly within this State and partly within another State or States, or whose sleeping cars run over any line lying partly within this State or partly within another State or States, shall be assessed in this State in the ratio which the number of miles of the line within the State has to the total number of miles of the entire lines.⁵⁴

§ 617. Maine.

The buildings of a railroad company and its land outside the right of way are taxed locally like other property.⁵⁵ A railroad company pays an excise tax to the State, and no other tax.⁵⁶ The entire gross receipts of the company are divided by the number of miles of road, to find the average receipts per mile. If this does not exceed \$1,500 per mile, the tax is one-half of one per cent. of the gross receipts for the mileage within the State; if the receipts are from \$1,500 to \$2,000 per mile, the tax is three-fourths of one per cent. of the receipts; and the rate increases one-fourth of one per cent. for each additional \$500 of gross receipts, never however exceeding four per cent.⁵⁷

Telegraph and telephone companies pay a local tax upon their real estate, and also on their personal property not directly exempted, which is, generally speaking, property used about the business.⁵⁸ They pay an excise tax on the gross receipts, at the rate of one and one-fourth per cent. if the receipts are from one to five thousand dollars; if from five to ten thousand dollars, one and one-half per cent. of the gross receipts; if from ten to twenty-five thousand dollars, one and three-fourths per cent.; from twenty-five to fifty thousand

⁵⁴ La. 1890, Act 106, § 29.

⁵⁵ Me. Rev. Stat. ch. 9, § 4.

⁵⁶ *Ibid.* ch. 8, § 24.

⁵⁷ *Ibid.* § 25.

⁵⁸ *Ibid.* § 41.

dollars, two per cent.; and so increasing one-fourth of one per cent. for each additional twenty-five thousand dollars up to four per cent.⁵⁹

Express companies pay two per cent. on all receipts from business within the State, including the proper proportion of the receipts from interstate business.⁶⁰

§ 618. Maryland.

A State tax as franchise tax is levied on the gross receipts of all railroad companies doing business in the State, of one per cent. on the gross earnings per mile if less than \$1,000; if more, then one per cent. on the first thousand dollars, one and a half per cent. on the second thousand, and two per cent. on all earnings above two thousand dollars a mile.

Two per cent. on the gross receipts of telegraph, cable, express or transportation, telephone, parlor car, sleeping car, safe deposit, trust, guarantee and fidelity company, incorporated in Maryland and doing business in the State.

One per cent. on the gross receipts of pipe line companies and title insurance companies incorporated and doing business in Maryland.

Three-quarters of one per cent. on the gross receipts of electric light companies incorporated and doing business in Maryland.

One and a half per cent. on the gross receipts of electric construction companies and gas companies incorporated and doing business in Maryland, and of foreign guano, phosphate or fertilizer companies doing business in Maryland.

Where the railroad company has part of its road in another State, the tax is paid on that proportion of its whole gross receipts which the length of line within the State bears to the whole line; and so of pipe lines, sleeping car, parlor car, express, transportation, telephone, telegraph or cable company.⁶¹

⁵⁹ *Ibid.* § 37.

⁶⁰ *Ibid.* § 42.

⁶¹ Md. 1896, ch. 120, § 146.

For local taxation the property of such companies is assessed where situated, and if it has no fixed situation then at the principal office of the company; and that proportion of the whole rolling stock shall be taxed which the length of line within the State bears to the whole length of line.⁶² And rolling stock shall be divided among the local taxing districts in the same manner.⁶³

§ 619. Massachusetts.

The Tax Commissioners ascertain the value of the capital stock of all domestic public service companies. Railroad companies are taxed locally on real estate and machinery. From the value of the stock is deducted an amount proportionate to the length of line outside the State, and also the value of the property locally taxed; and the company is taxed by the State upon the balance.⁶⁴ Telephone companies are taxed in the same way, deducting the value of other corporations held by it and separately taxed, an amount proportionate to the number of telephones outside the State, and the value of property locally taxed.⁶⁵ The rate of taxation is the average of local rates.⁶⁶ Foreign companies are taxed, like foreign corporations generally, upon the value of their property situated in the State.

§ 620. Michigan.

A special tax is levied by the State upon the "property having a *situs* in this State of railroad companies, union station and depot companies, express companies doing business within this State, car loaning companies and refrigerator and fast freight line companies, and all other corporations owning, leasing, running or operating any freight, stock, refrigerator

⁶² *Ibid.* § 178.

⁶³ *Ibid.* ch. 140, § 199.

⁶⁴ Mass. Rev. L. ch. 14, § 38.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.* § 40.

or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State.”⁶⁷

The assessment is made by a State Board of Assessors (the State Tax Commissioners) upon the basis of returns made by the various corporations to the Board.⁶⁸

“The term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, roadbed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switchboards, and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property.”⁶⁹ This property is, however, not to include real estate not actually used in the corporate business; which shall be taxed like other real estate.

The term “property having a *situs* in this State” shall include all the property, real and personal, of the corporations enumerated in this act, owned, used and occupied by them within the limits of this State, and also such proportion of the rolling stock, cars and other property of such corporations as is used partly within and partly without this State, as herein provided to be determined.⁷⁰

The assessment is made upon the following principles: “In determining the true cash value of the property of railroad and union station and depot companies which own, lease or operate lines partly within and partly without this State the said board shall be guided, in ascertaining the property

⁶⁷ Mich. 1901, Act 173, § 4.

⁶⁸ *Ibid.* § 6.

⁶⁹ *Ibid.* § 5.

⁷⁰ *Ibid.* § 5.

subject to taxation in Michigan, by the relation which the number of miles of main track within the State of Michigan bears to the entire mileage of the main track of said companies both within and without the State.

“In determining the cash value of the property of express companies, they shall ascertain and determine the actual value in money of the entire amount of the capital stock and bonded indebtedness of such express company. From the amount so obtained and determined, the board shall deduct the actual value of all real estate owned by it as ascertained by said board, and the actual value of all its personal property which is not used in the express business of such express company. And the remainder thus obtained shall be used in determining the assessment of such express company in the following manner: The said board shall then divide the amount as obtained above by the total number of miles of railroad, stage, water and other routes over which the company did business, to obtain the value per mile, and shall then multiply the value per mile thus obtained by the total number of miles of such routes within this State, exclusive, however, of the number of miles of water routes over the navigable waters of the United States within this State, to which result shall be added the value of all real estate owned by such express company in this State, as determined by said board, and the sum so obtained shall be taken and considered as the actual value of the property of such express company subject to assessment and taxation in this State.

“In ascertaining the cash value of the property of car loaning, stock car, refrigerator, fast freight line and other car companies subject to taxation under this act, they shall ascertain the average number of cars used in this State during the year preceding . . . such average to be determined by dividing the total number of cars so used or operated within this State during said year by the total number of days on which said cars were so used or operated within this State; and they shall also ascertain the average cash value of such average

number of cars, and from said data the total valuation shall be determined and shall be the assessment against the property of said corporation.”⁷¹

The corporations are to be taxed upon this valuation at the average rate of taxation in the State, to be determined by the Board.⁷²

§ 621. Minnesota.

Railroads pay a special tax of one per cent. a year on their gross earnings for the first three years after thirty miles of road have been built (or the whole road if less than thirty miles); two per cent. on their gross earnings for the next seven years; and three per cent. a year thereafter. “The payment of such per centum annually as aforesaid shall be and is in full of all taxation and assessment whatever.” Returns of the gross earnings are to be made.⁷³

A union depot company, all the stock of which was held by the railroads entering it, was held not to be taxable in this way. Its earnings formed part of the earnings of the railroad companies, and were taxed as such; and to tax them again would be double taxation.⁷⁴

The exemption from other taxation extends only to property actually held and used for railroad purposes.⁷⁵ The tax is not applicable to street railways.⁷⁶

Gross earnings are defined to be “all earnings on business beginning and ending within the State, and a proportion based upon the proportion of the mileage within the State to the entire mileage over which such business is done, of earnings on all interstate business passing through, into or out of the State;

⁷¹ *Ibid.* § 8.

⁷² *Ibid.* § 13.

⁷³ Minn. Stat. §§ 1667, 1668, 1669, 1678.

⁷⁴ *State v. St. Paul Union Depot Co.*, 42 Minn. 142, 43 N. W. 840.

⁷⁵ *County of Ramsey v. Chicago, M. & S. P. Ry.*, 33 Minn. 537, 24 N. W. 313.

⁷⁶ *State v. Duluth Gas & Water Co.*, 76 Minn. 96, 78 N. W. 1032, 57 L. R. A. 63.

and shall include gross earnings of all express companies, fast freight lines, sleeping and parlor car companies, and other common carriers, corporations or persons doing business or transporting persons or property on and over the lines or right of way of any railroad company within this State by virtue of an agreement, contract or arrangement of any nature with such railroad company.”⁷⁷ Foreign railroad companies are taxed in the same way.⁷⁸

Telegraph and telephone lines make a return showing the number of miles owned, operated or leased (the number leased being stated separately), the number of stations and instruments, the average number of poles per mile, and the length of line in each county. The State Board of Equalization assesses the lines “at the true cash value thereof,” and determines the rate of taxation, which is the average rate throughout the State; “which tax shall be in lieu of all other taxes, State and local, and shall be payable into the State treasury.”⁷⁹

§ 622. Mississippi.

Railroad companies make a statement showing the nature and value of all property, including length and value of road-bed, rolling-stock and buildings, amount and value of capital stock, and gross receipts, with the proportion earned within the State. The Railroad Commission then “assess all railroads, telegraph, sleeping-car and express company property liable to taxation in the State, affixing its true value, so that such property shall bear its just proportion of taxation, taking into consideration the value of the franchise; the capital stock engaged in the business in this State; and the railroad assessors may adopt other and further rules necessary and proper to ascertain the value of property to be assessed by them, including the amount of capital engaged in the business in this State.”⁸⁰

⁷⁷ Minn. Stat. § 2753.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.* §§ 1682-1685.

⁸⁰ Miss. Code, § 3875-3877.

§ 623. Missouri.

It is provided in the Constitution that "All railroad corporations in this State and doing business therein shall be subject to taxation for State, county, school, municipal and other purposes on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock."⁸¹

Railroads, street railroads, and car companies make reports from which the actual value of the property of such companies within the State may be ascertained; the property is then valued by a State Board of Equalization. The proper proportion of the entire rolling stock of an interstate road is found. A car company pays a State tax of two per cent. in lieu of all other taxes.⁸² A street railroad is taxed upon its property like a private person.⁸³ All "local property" of railroads, such as land, buildings, goods and chattels, shall be assessed where situated;⁸⁴ the remaining property is apportioned to the local taxing districts in proportion to the number of miles of road within them.⁸⁵

Telegraph and express companies are taxable upon all their property, including their franchises; the tax to be assessed in the same manner as that of railroads.⁸⁶

§ 624. Montana.

Railroads make returns of their property and earnings to the State Board of Equalization.⁸⁷ The State Board assesses the franchise (excluding franchises derived from the United States) roadway, roadbed, rails and rolling stock of all railroads extending through more than one county; and appor-

⁸¹ Mo. Const. Art. 10, § 5.

⁸² Mo. Rev. Stat. § 9349.

⁸³ *Ibid.* § 9354.

⁸⁴ *Ibid.* § 9360.

⁸⁵ *Ibid.* § 9357. See the distinction between the "local" and other property discussed, *State v. Hannibal & S. J. R. R.*, 135 Mo. 618, 37 S. W. 532.

⁸⁶ *Ibid.* § 9387.

⁸⁷ Mont. Polit. Code, § 3737.

provided for operating and carrying on the business of such road, in whole or in part, together with the moneys, credits, franchises and all other property of such railroad company used or held for the purpose of operating its road."⁹³ Returns show length of tracks in this and other States; list of buildings, cars, etc., with number of miles travelled in and out of the State and returns as to capital stock; the value of tools, bridges, etc., the gross and net earnings, expenditures, etc.; also the length of track in each township or local taxing district.⁹⁴

Sleeping and parlor car companies and other car companies which make an extra charge are taxed on the value of the cars proportioned on the total number of miles on which the cars are run and the number of miles over which they run within the State.⁹⁵ As to other car companies, the actual mileage run by the cars everywhere and within the State is found, and the company taxed on the average number of cars within the State at their average value.⁹⁶

§ 626. New Hampshire.

The real estate of railroad, telegraph, and telephone corporations and companies, not used in their ordinary business, shall be appraised and taxed by the authorities of the towns in which it is situated.⁹⁷ The property of such domestic corporations used in its business appears to be taxed like the property of ordinary corporations, that is, by taxation of the shares.

§ 627. New Jersey.

The real estate, personal estate, and franchise of every railroad is taxed at the rate of one-half of one per cent. on each dollar for general State purposes; and in addition locally at a

⁹³ *Ibid.* § 86.

⁹⁴ *Ibid.* §§ 87, 90.

⁹⁵ *Ibid.* § 101.

⁹⁶ *Ibid.* §§ 97, 99.

⁹⁷ N. H. Pub. Stat. ch. 55, § 6.

rate not exceeding one per cent. on its real estate (excluding the main track and passenger depot buildings), waterways, reservoirs, buildings, water tanks, waterworks, wharves and piers, and all other real estate not used for railroad purposes.⁹⁸ A Board of Assessors assesses the property.⁹⁹ Deductions are allowed for mortgage debt (the estate of the mortgagee being taxable in the State) and for other debts due to creditors within the State.¹⁰⁰ The tax imposed by this act shall be in lieu of all other taxation upon the property subject to taxation under the provisions of this act.¹⁰¹

Telegraph and telephone companies pay an annual license fee of two per cent. of their gross receipts.¹⁰²

§ 628. New Mexico.

Express companies pay a tax of two per cent. on their gross receipts within the Territory, in addition to the tax on their tangible property.¹⁰³ Sleeping and palace car companies pay two dollars and a half on each hundred dollars of gross earnings within the State.¹⁰⁴

§ 629. New York.

All structures on the land and used in connection with it are assessed to railroads, telegraph and telephone companies as real estate; which also includes all special franchises connected with the use of land.¹⁰⁵ This property is assessed locally.¹⁰⁶ Railroads, express companies, and telegraph and telephone companies are assessed an annual license fee of one-half of

⁹⁸ N. J. Gen. Stat. p. 3327, § 220.

⁹⁹ N. J. P. L. 1891, p. 165.

¹⁰⁰ N. J. P. L. 1888, p. 269.

¹⁰¹ N. J. Gen. Stat. p. 3324, § 212.

¹⁰² *Ibid.* p. 3337, § 260.

¹⁰³ N. Mex. Comp. L. § 3927.

¹⁰⁴ *Ibid.* §§ 4119, 4120.

¹⁰⁵ N. Y. Rev. Stat. p. 3525, § 2.

¹⁰⁶ *Ibid.* p. 3542; Tax Law, § 39.

one per cent. on the gross earnings from business originating and terminating within the State.¹⁰⁷

This does not apply to a railroad which terminates outside the State, and has a mere office for delivery and the sale of tickets within the State. Such business is exclusively interstate commerce.¹⁰⁸

Corporations for supplying water or gas, or for electric or steam heating, lighting or power purposes pay annually one-half of one per cent. on their gross earnings within the State and three per cent. of their dividends in excess of four per cent. of their paid-up capital.¹⁰⁹

§ 630. North Carolina.

Every corporation operating a steam railroad in the State makes a return of its gross earnings, number of miles operated everywhere and number operated within the State, and the gross earnings per mile during the year.¹¹⁰ An annual license tax for operating the roads within the State is then exacted as follows: when gross earnings per mile are one thousand dollars, or less, per year, a tax of two dollars per mile; when gross earnings per mile exceed one thousand dollars per year, but do not exceed two thousand dollars, a tax of three dollars per mile; when gross earnings per mile exceed two thousand dollars per year, but do not exceed three thousand, a tax of four dollars per mile; when gross earnings per mile are in excess of three thousand dollars per year, a tax of five dollars per mile. The tax imposed by this section shall be paid to the State Treasurer at the time of making the report provided in section seventy-eight. No county, city or town shall be allowed to collect any tax under this section.¹¹¹

“There shall be paid by every express company, telegraph and telephone company doing business in the State, an annual

¹⁰⁷ N. Y. Tax Law, § 184.

¹⁰⁸ *P. v. Wemple*, 138 N. Y. 1, 33 N. E. 720, 19 L. R. A. 694.

¹⁰⁹ N. Y. Tax L. § 186.

¹¹⁰ N. C. Revenue Law of 1903, § 78.

¹¹¹ *Ibid.* § 79.

license tax as follows: By each express company, an amount equal to two dollars on every mile of railroad in the State over which mile such company does an express business; by every telegraph company, an amount equal to twenty-five cents on each mile of wire such company operates within the State; by every telephone company, an amount equal to two per cent. of the gross receipts of such telephone company within the State, reckoning for the purpose of ascertaining the amount of such gross receipts the proportion of the interstate business done within the State, which is properly credited to North Carolina. *Provided*, that if any such company shall file with the Board of State Tax Commissioners a statement signed and sworn to by its principal officer in this State showing that at least one-quarter of the entire assets of his company, when his company has assets, are invested in and are maintained in any or all of the following securities or property, viz.: bonds of this State, or of any county, city, or town of this State; or any property situate in this State and taxable therein, then the tax shall be one and one-half per cent.; and if the amount so invested shall be one-half of its total assets, the tax shall be one per cent.; and if the amount so invested shall be three-fourths of its total assets, the tax shall be one-half of one per cent." Provision is made for a return of the gross receipts. "*Provided*, no county or corporation shall be allowed to impose any additional tax, license or fee except the *ad valorem* tax." ¹¹²

The Board of Corporation Commissioners, acting as a Board of State Tax Commissioners, shall have the right to examine books, papers or accounts of any corporation . . . owning property liable to assessment for taxes, general or specific, under the laws of this State.¹¹³

Every telegraph, telephone, express, sleeping car, refrigerator and freight car, street railway, waterworks, electric light and power, gas, ferry, bridge and canal company, association or corporation, and every other firm, association or

¹¹² N. Car. Machinery Law of 1903, § 80.

¹¹³ *Ibid.* § 4.

corporation exercising the right of eminent domain, whether incorporated under the laws of this State or under the laws of some other State, or country, shall annually, between the first and twentieth of June, make out and deliver to the Corporation Commission a statement verified by the oath of the officer or agent making such report, with reference to the 31st day of May, showing the value of the property of all kinds owned by such company, association or corporation.¹¹⁴

The president, secretary, superintendent, or other principal accounting officers within this State of every railroad, telegraph, telephone, street railway companies, whether incorporated by the laws of this State or not, shall at such dates as real estate is required to be assessed for taxation return to the said Commissioners for assessment and taxation, verified by the oath or affirmation of the officer making the return, all the following described property belonging to such corporation within this State, viz.: The number of miles of such railroad lines in each county in this State, and the total number of miles in the State, including the roadbed, right of way, and superstructures thereon, main and side tracks, depot buildings and depot grounds, section and tool houses, rolling stock and personal property, necessary for the construction, repairs or successful operation of such railroad lines, including also, if desired by the North Carolina Corporation Commission, Pullman or sleeping cars or refrigerator cars, owned by them or operated over their lines: *Provided, however*, that all machine and repair shops, general office buildings, storehouses and also real and personal property outside of said right of way and depot grounds, as aforesaid, of and belonging to any such railroad companies, shall be listed for purposes of taxation by the principal officers or agents of such companies with the list-takers of the county, where the real and personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property. It shall be the duty of the list-takers,

¹¹⁴ *Ibid.* §§ 40 to 45.

if required so to do by the said Commissioners, to certify and send to the Commissioners a statement giving a description of the property mentioned in the foregoing proviso, and showing the assessed valuation thereof; the Register of Deeds shall also certify to the Commissioners the local rate of taxation for county purposes as soon as the same shall be determined, and such other information obtained in the course of the performance of the duties of their office as the said Commissioners shall require of them, and the Mayor of each city or town shall cause to be sent to the said Commissioners the local rate of taxation for municipal purposes.¹¹⁵

A schedule shall also be returned to the Commissioners of all the movable property of the railroad company "which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping and dining cars, express cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars, and all other kinds of cars and the value thereof." Also the amount of capital stock authorized and paid up, number and market or actual value of shares, length of line operated in each county and in the whole State, the total assessed value of all tangible property in the State, etc.¹¹⁶

The Corporation Commissioners, acting as a Board of Appraisers and Assessors, examine these statements and from them and such other information as they may obtain assess the property of such corporations.¹¹⁷

The value of railroad property is assessed as follows:

(a) The said Commissioners shall first determine the value of the tangible property of each division or branch of such railroad, of rolling stock, and all other physical or tangible property. This value shall be determined by a due consideration of the actual cost to replace the property, with a just allowance for depreciation on rolling stock, and also of other

¹¹⁵ *Ibid.* § 53.

¹¹⁶ *Ibid.* § 54.

¹¹⁷ *Ibid.* §§ 47, 52.

conditions to be considered as in the case of private property.

(b) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses; and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds or any other securities, the value of which is based upon the earning capacity of the property.

(c) The aggregate value of the physical or tangible property and the franchise, as thus determined, shall be the true value of the property for the purpose of an *ad valorem* taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch road in each county bears to the entire length of such division or branch thereof; and the Commissioners shall certify to the chairman of the County Commissioners and the Mayor of each city or incorporated town, the amount apportioned to his county, city or town, and the Commissioners shall make and forward a like certificate to the Auditor of the State. All taxes due the State from any railroad company, except the tax imposed for school purposes, shall be paid by the treasurer of each company directly to the State Treasurer within thirty days after the first day of July of each year, and upon failure to pay the State Treasurer as aforesaid, he shall institute an action to enforce the same in the county of Wake or any other county in which such railroad is located, adding thereto twenty-five per centum of the tax. The Board of County Commissioners of each county through which said railroad passes shall assess against the same only the tax imposed by the State for school purposes and those imposed for county purposes.¹¹⁸

When any railroad has part of its road in this State and part thereof in any other State, the Commissioners shall ascertain the value of railroad track, rolling stock, and all other property

¹¹⁸ *Ibid.* § 55.

liable to assessment by the Corporation Commission of such company, as provided in the next preceding section, and divide it in the proportion to the length of such main line of road in his State bears to the whole length of such main line of road, and determine the value in this State accordingly.¹¹⁹

If the property of any railroad company be leased or operated by any other corporation, foreign or domestic, the property of the lessor or company whose property is operated shall be subject to taxation in the manner hereinbefore directed. And if the lessee or operating company, being a foreign corporation, be the owner or possessor of any property in this State other than which it derives from the lessor or company whose property is operated, it shall be assessed in respect to such property in like manner as any domestic railroad company.¹²⁰ Canal and steamboat companies are assessed in the same way.¹²¹

§ 631. North Dakota.

Railroads are specially taxed under the Constitution. The legislative assembly may provide for the payment of a percentage of the gross earnings of railroads in lieu of State, county and township taxes on property exclusively used in and about the prosecution of their business as common carriers. No real estate except the roadbed, right of way, shops and buildings used exclusively for their business shall be exempt under this provision.¹²² The franchise, roadbed, rails and rolling stock of railroads operated in the State are to be assessed by a State Board of Equalization and apportioned to the local taxing districts in proportion to the number of miles of railway in each.¹²³

§ 632. Ohio.

Electric light, gas, natural gas, pipe line, waterworks, street,

¹¹⁹ *Ibid.* § 56.

¹²⁰ *Ibid.* § 57.

¹²¹ *Ibid.* § 59.

¹²² N. Dak. Const. § 176.

¹²³ *Ibid.* § 179.

suburban or interurban railroad, express, telegraph, telephone, messenger or signal, and union depot company shall make annual return of its gross earnings within the State; the gross earnings within the State of railroad companies operating partly outside the State being found by taking a part of their total earnings proportional to the number of miles within the State. On their gross earnings within the State these corporations pay a tax of one per cent.¹²⁴

The tangible property is locally taxed. The property of a railroad is assessed by a State Board.

"The value of such property, moneys and credits, of any railroad company, as found and determined by such board, shall be apportioned by said board among the several counties through which such road, or any part thereof, runs, so that to each county and to each city, village, township and district, or part thereof therein, shall be apportioned such part thereof as shall equalize the relative value of the real estate, structures, and stationary personal property of such company therein, in proportion to the whole value of the real estate, structures, and stationary personal property of such railroad company in this state; and so that the rolling stock, main track, roadbed, supplies, moneys and credits of such company shall be apportioned in the same proportion that the length of such road in such county bears to the entire length thereof in all said counties or county, and to each city, village, and district, or any part thereof therein, provided that if the line of any railroad company is divided into separate divisions or branches, so much of the rolling stock of such company as belongs to or is used solely upon any one of such divisions or branches shall be apportioned in the same manner to the county or counties, and to each city, village and district, or any part thereof therein, through which such branch or division runs, and the board shall certify to the county auditor of each county, and to each city, incorporated village, township and district, or any part

¹²⁴ Ohio Rev. Stat. § 2780, cl. 18, 19, 21, amended by Oh. L. 1902, p. 136.

thereof therein interested, the amount apportioned to his county, and the board shall make and forward a like certificate together with all the reports of the various railroad officers, and other papers and evidence which formed the basis of their valuation, to the auditor of state, for the use of the state board of equalization of railroad property. It shall be the duty of the county auditor, upon receiving the certificate aforesaid, to apportion the amount therein stated to the cities, villages, townships, districts, or parts thereof; but the auditor shall not put the same on the tax list until he shall have been advised of the action of said state authority, when the proper amounts shall be entered on the tax lists."¹²⁵

§ 633. Oklahoma.

The governor, secretary and auditor of the Territory are made a board of railroad assessors, whose duty it is to assess all the property of railroads at its actual cash value. This assessment is not to include land and buildings of the railroad not used in the operation of the railroad. Cars belonging to car companies are assessed in the same way.¹²⁶

§ 634. Oregon.

Rolling stock of a railway is assessed in the county where the principal terminus or depot of the railway is; provided that if it has a terminus or depot in the county where the principal office is, it shall there be assessed.¹²⁷

§ 635. Pennsylvania.

Transportation, transmission and electric light companies, in addition to the tax upon their capital stock, pay a tax upon their gross receipts. The law provides that every railroad, pipe line, conduit company, steamboat company, canal company, slack-water navigation company, transportation company and every foreign or domestic company, doing business

¹²⁵ *Ibid.* § 2774.

¹²⁶ Okl. 1895, ch. 43, Art. 4, §§ 2, 6; 1899, ch. 28, Art. 3, § 1.

¹²⁷ Ore. Misc. § 2744.

in Pennsylvania, and owning, operating or leasing any . . . device for transportation of freight or passengers or oil, and every telephone or telegraph company, and every express company,¹²⁸ and every electric light company, palace car and sleeping car company doing business in Pennsylvania shall pay a tax of eight mills on the dollar on the gross receipts received from passengers and freight traffic, etc., wholly within the State.¹²⁹

Under this act it was held that tolls received by one railroad company from another for the joint use of the track of the former, computed not upon the amount of the gross receipts, but at a certain specified sum per ton or per passenger, are not "received from passenger and freight traffic," and are, therefore, not to be included in the gross receipts for purposes of taxation.¹³⁰

§ 636. Rhode Island.

Every telegraph and telephone company, and express company, doing business within the State pays to the State one per cent. of its gross receipts within the State, which is in lieu of all other taxes on its lines and personal estate used in its business.¹³¹

§ 637. South Carolina.

There appears to be no special provisions for taxing such corporations, the taxation of many of them being fixed in the charter.

§ 638. South Dakota.

All property, real and personal, belonging to any railway company in this State and necessarily used in the operation of its line or lines of railway in this State, shall be assessed

¹²⁸ Pa. 1889, P. L. 420, § 23.

¹²⁹ The law as to express companies was altered by 1897, P. L. 294, but this provision was repealed and the tax provided by the original act restored by 1899, P. L. 72, § 2.

¹³⁰ Com. v. New York, L. E. & W. R. R., 145 Pa. 200, 22 Atl. 806.

¹³¹ R. I. Gen. L. ch. 29, §§ 12, 13.

for purposes of taxation by the State Board of Assessment and Equalization, and not otherwise; but property not so used shall be assessed locally.¹³² Returns of amount of property and earnings are made to the board,¹³³ which then assesses the property like that of individuals. In valuing the railroad property the gross and net earnings per mile are considered.¹³⁴ The assessment is then distributed to the counties in ratio of mileage.¹³⁵

§ 639. Tennessee.

Telegraph and telephone companies are also assessed by the State Board on all their property, account being taken of the receipts;¹³⁶ and the same method is taken for assessing the property of express and sleeping car companies.¹³⁷

§ 640. Texas.

All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this State, shall bear its proportionate share of municipal taxation.¹³⁸ All property of railroad companies shall be assessed and the taxes collected in the several counties in which said property is situated, including so much of the roadbed and fixtures as shall be in each county. The rolling stock may be assessed in gross in the county where the principal office of the company is located, and the county tax paid upon it shall be apportioned by the comptroller in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as a part of their tax assets.¹³⁹

¹³² S. Dak. Polit. Code, § 2183.

¹³³ *Ibid.* § 2185.

¹³⁴ *Ibid.* § 2186.

¹³⁵ *Ibid.* § 2187.

¹³⁶ *Ibid.* §§ 2194, 2195.

¹³⁷ *Ibid.* § 2198.

¹³⁸ Tex. Const. Art. 8, § 5.

¹³⁹ *Ibid.* § 8.

§ 641. Utah.

All property and franchises owned by railroad, street railway, car, depot, telegraph and telephone companies in this State are assessed by the State Board of Equalization, and pay an *ad valorem* tax.¹⁴⁰

§ 642. Vermont.

The Commissioner is to appraise at its fair and just value all property acquired, constructed or used for railroad business or purposes, including the corporate franchise, belonging to any corporation or person owning or operating a railroad located entirely within this State.

Such appraisal shall be taken to be the true value of such railroad, its rights, corporate franchise and property in this State for the purposes of taxation.

If a line of railroad extends beyond the limits of this State, its whole valuation ascertained as aforesaid shall be divided by the number of miles of its entire main line, and the amount thus obtained shall be taken to be the value of said railroad per mile; such sum shall be multiplied by the number of miles in this State and the product thus obtained shall be taken to be the true value of such railroad, its rights, corporate franchise and property within this State, for the purposes of taxation; provided however, that if less than one mile of the main line of a railroad is within this State, the commissioner of State taxes may appraise such portion lying within this State at its fair and just value without appraising that part lying without the State.¹⁴¹

The property of steamboat, car, and transportation companies shall be appraised, following so far as applicable the provisions relating to the appraisal of the property of railroads.¹⁴²

A tax of seven-tenths of one per cent. is hereby annually

¹⁴⁰ Ut. Rev. Stat. § 2513.

¹⁴¹ Vt. 1902, Act 20, §§ 12, 13.

¹⁴² *Ibid.* § 24.

assessed upon the appraisal obtained as hereinbefore provided, against each corporation or person so operating a railroad in this State on the 30th day of June preceding such appraisal;¹⁴³ one-half of which shall be paid to the State treasurer on or before the 15th day of April following such appraisal and the other half on or before the 15th day of October next ensuing.¹⁴⁴

A corporation or person owning or operating a railroad in this State may annually pay to the State in lieu of the tax assessed in the preceding section two and one-half per cent. on its entire gross earnings, if such railroad is situated wholly in this State; if situated partly within and partly without this State then such two and one-half per cent. on gross earnings shall be upon such proportion of such entire gross earnings of such road as the mileage of all trains run in this State bears to the mileage of all trains run on the entire line of such road for each six months' period.¹⁴⁵

A corporation or person owning or operating sleeping, palace, or other cars which run upon any of the railroads in this State, and for riding in which extra compensation is charged, shall annually on or before the 15th day of October pay a tax to the State which is hereby assessed at the rate of five per cent. on the entire gross earnings of such cars for business done wholly within this State including all sums received for the use of cars, during the year ending with the last day of June next preceding.¹⁴⁶

A corporation or person, doing express business in this State shall annually on or before the 15th day of October pay a tax to the State, which is hereby assessed at the rate of four per cent. annually on the gross receipts of their business done wholly in this State, during the year ending with the last day of June next preceding.¹⁴⁷

¹⁴³ And so of steamboat, car and transportation companies; *ibid.* §§ 25, 26.

¹⁴⁴ *Ibid.* § 19.

¹⁴⁵ *Ibid.* § 20.

¹⁴⁶ *Ibid.* § 28.

¹⁴⁷ *Ibid.* § 29.

A corporation or person owning or operating a telegraph line within this State shall pay an annual tax to the State upon the property or corporate franchise of such corporation or person, which is hereby assessed at the rate of sixty cents per mile of poles and one line of wire and forty cents per mile for each additional wire, owned, maintained or operated within this State, during the year ending with the last day of June.

Said corporation or person may in lieu of the tax assessed in the preceding section, annually pay to the State a sum equal to three per cent. of the entire gross earnings of such corporation or person collected within the State on account of telegraphic messages or communications sent or received therein.¹⁴⁸

A corporation or person owning or operating a telephone line within this State shall pay an annual tax to the State which is hereby assessed at the rate of forty cents each upon the average number of telephonic transmitters in use within this State and maintained or operated by such corporation or person during the year ending with the last day of December; and at the rate of thirty cents per mile upon the average mileage of all telephone wires in use, owned, maintained or operated by such corporation or person within this State during the year ending with the last day of December.

Such corporation or person may in lieu of the tax assessed in the preceding section annually pay to the State three per cent. on the entire gross receipts for business done wholly within this State, including all sums received for tolls and for rental of lines, instruments or other appliances, and from any division or apportionment of tolls or rentals.¹⁴⁹

§ 643. Virginia.

Railroads and canals are assessed by the State Corporation Commission, which is to find "the value of the roadbed and other real estate, rolling stock and all other personal property

¹⁴⁸ *Ibid.* §§ 30, 31.

¹⁴⁹ *Ibid.* §§ 33, 34.

whatsoever (except its franchise and the non-taxable shares of stock issued by other corporations) in this State" of each railroad, whatever its motive power, and the similar property of canal corporations; which shall be taxed for State and local purposes like the property of natural persons; "*provided*, that no tax shall be laid upon the net income of such corporations." ¹⁵⁰

In addition to this tax, every such corporation shall pay an annual franchise tax of one per cent. on its gross receipts for the privilege of exercising its franchises within the State. These two taxes shall be in lieu of all taxes or license charges upon the franchise of such corporation, the shares of stock issued by it, and its property, except the registration fee and assessments for local improvements. This tax is in the case of a railroad or canal entirely within the State laid upon the entire gross transportation receipts. In the case of a road or canal partly within and partly outside the State the average receipts per mile for the whole line are to be ascertained, and multiplied by the number of miles within the State; making however, a reasonable deduction "because of any excess of value of the terminal facilities or other similar advantages in other States over similar facilities or advantages in this State." ¹⁵¹

§ 644. Washington.

Railroad and other public service corporations appear to be assessed like individuals.

§ 645. West Virginia.

Railroad companies make a return showing the number of miles of road within and outside the State; the value of its track; its rolling stock (distinguishing between such as is used wholly within the State and such as is used partly without), with the fair cash value of the rolling stock used wholly within the State, and the proportional value (with relation to the

¹⁵⁰ Va. Const. § 176.

¹⁵¹ *Ibid.* §§ 177, 178.

time used and number of miles run within and without the State) of the rest; and the proportional value in each county; its depots and other buildings and its telegraph lines with their value; its other personal property; its capital stock; bonded and other indebtedness, gross earnings (itemized), and gross expenditure (itemized). The Board of Public Works then assesses the cash value of the property, and apportions it to the local taxing district. The Auditor then assesses the State taxes, and also the local taxes at the local rate. All real estate of the company not used in connection with the railroad shall be assessed and taxed like the property of individuals.¹⁵²

The property of domestic insurance, telegraph, telephone and express companies shall be assessed for taxation as other property in this State. But the stock notes of such companies shall not be assessed; nor shall such notes or any part of them be considered a part of the indebtedness of the maker thereof, in listing his property for taxation.¹⁵³

Every foreign insurance, telegraph, telephone and express company doing business in this State (not including telegraph lines owned and operated by railroad companies for railroad purposes only) make returns to the State Auditor. The returns of an insurance company show the amount of risks on all insurances made or renewed within the State. The returns of a telegraph or telephone company show the full number of miles of lines used or operated by the company within the State. The returns of an express company to show the number of miles of road operated by the company within the State;¹⁵⁴ express companies, one dollar and fifty cents per mile of road used; telegraph companies, one dollar per mile of wire, telephone companies, one dollar per mile of wire over which messages are sent or received "as common carriers between cities, towns or villages," but not over local exchanges.¹⁵⁵

¹⁵² W. Va. Code, ch. 29, § 67.

¹⁵³ *Ibid.* ch. 34, § 6.

¹⁵⁴ *Ibid.* ch. 34, §§ 7-10, amended 1901, Act 107.

¹⁵⁵ *Ibid.* ch. 34, § 13, amended 1901, ch. 107.

§ 646. Wisconsin.

Railroad companies pay an annual license fee of four per cent. of their gross earnings, if they earn more than \$3,000 per mile; three and a half per cent. if they earn from \$2,500 to \$3,000 per mile; three per cent. if they earn from \$2,000 to \$2,500 per mile; and if they earn less than \$2,000 per mile, five dollars a mile, and in addition two and one half per cent. on all earnings above \$1,500 per mile.¹⁵⁶

Express companies are taxed on the value of their property; this is found by taking the entire value of the capital stock, deducting the value of the real estate outside the State and of personal property not used in the express business, and apportioning the balance according to the mileage inside and outside the State.¹⁵⁷

Telegraph companies pay a license fee annually as follows: for a single line of wire, one dollar per mile; for a second wire, fifty cents per mile; for a third wire, twenty-five cents per mile; for each additional wire, twenty cents per mile.¹⁵⁸

Telephone companies pay an annual license fee of three per cent. on the gross receipts over \$100,000, and two and a quarter per cent. on gross receipts under that amount.¹⁵⁹

The following property is exempt from local taxation:

The track, right of way, depot grounds, buildings, machine shops, rolling stock and all other property necessarily used in operating any railroad in the State (subject, however, to local assessments for local improvements in cities and villages); all property except real estate of all companies engaged in telegraphing; the property of all telephone companies except real estate not necessary for the purpose of their business.¹⁶⁰

§ 647. Wyoming.

Railroad, telegraph and telephone companies make an an-

¹⁵⁶ Wis. Stat. § 1213.

¹⁵⁷ Wis. 1899, ch. 111, § 4.

¹⁵⁸ Wis. Stat. § 1216.

¹⁵⁹ *Ibid.* § 1222a.

¹⁶⁰ *Ibid.* § 1038.

nual statement showing "franchises, roadway, roadbed, rails and rolling stock," including sleeping and dining cars making regular trips over the railroad, and all other property used in the State. The State Board of Equalization then assesses the value per mile of all the property actually used within the State in the business of the company. The company is then taxed in each county on this valuation.¹⁶¹ Express companies pay one per cent. on their gross receipts within the State in lieu of all taxes, State and local.¹⁶²

§ 648. New Brunswick.

An annual tax is laid as follows:

Express companies operating over a railway mileage of 100 to 250 miles, fifty dollars; mileage of 250 to 500 miles, one hundred twenty-five dollars; 500 miles and over, two hundred fifty dollars.¹⁶³

Telephone companies, twenty-five cents on each telephone.¹⁶⁴

Telegraph companies, five hundred dollars, but one hundred dollars in case of a company working less than one hundred miles of wire in the Province.¹⁶⁵

§ 649. Ontario.

Taxes are assessed as follows :

Railroad companies, \$5 per mile operated in the Province.

Telegraph companies one-tenth of one per cent. of paid-up capital.

Telephone companies, one-eighth of one per cent. of paid-up capital.

Gas and electric lighting companies in any city, not owned by the city, one-tenth of one per cent of paid-up capital.

Natural gas companies (either producing or transporting), \$1,500.

¹⁶¹ Wyo. 1901, ch. 50.

¹⁶² Wyo. 1903, ch. 111, § 2.

¹⁶³ N. Brun. 1892, ch. 4, § 1, cl. 5.

¹⁶⁴ *Ibid.* § 1, cl. 6.

¹⁶⁵ *Ibid.* § 1, cl. 9.

Express companies, \$800 for first 400 miles of railway in the Province, or fraction, and \$125 for each additional 400 miles or fraction.

Sleeping car companies, one-third of one per cent. on capital invested in rolling stock in use in Ontario.¹⁶⁶

These companies are also assessable for municipal purposes, except railroad companies,¹⁶⁷ which are assessed specially.

§ 650. Quebec.

Taxes are assessed as follows:

Railway companies receiving subsidies from the government, and certain other named companies, pay annually ten dollars for each mile operated; others pay five dollars per mile.

Telegraph companies pay one-tenth of one per cent. on the amount of paid-up capital to \$50,000, and \$2,000 for every company with a greater paid-up capital.

Telephone companies pay one-tenth of one per cent. on the paid-up capital if \$50,000 or less; if between \$50,000 and \$100,000, two hundred and fifty dollars; if between one and two hundred thousand dollars, five hundred dollars; if between two and three hundred thousand dollars, one thousand dollars; if over three hundred thousand dollars, fifteen hundred dollars.¹⁶⁸

Foreign express companies pay one-tenth of one per cent. of the paid-up capital to one million dollars, and twenty-five dollars for each hundred thousand dollars or fraction thereof over a million.¹⁶⁹

¹⁶⁶ Ont. 1899, ch. 8, § 2.

¹⁶⁷ *Ibid.* § 6.

¹⁶⁸ Que. 1895, ch. 15.

¹⁶⁹ Que. 1903, ch. 19.

CHAPTER XXVII

INCORPORATION TAX.

§ 651. Nature of incorporation.	§ 676. Montana.
652. Alabama.	677. Nebraska.
653. Arizona.	678. Nevada.
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668. Louisiana.	693. Texas.
669. Maine.	694. Utah.
670. Maryland.	695. Vermont.
671. Massachusetts.	696. Virginia.
672. Michigan.	697. Washington.
673. Minnesota.	698. West Virginia.
674. Mississippi.	699. Wisconsin.
675. Missouri.	700. Wyoming.

§ 651. Nature of incorporation tax.

In most States, a tax or fee is payable to the Secretary of State for the privilege of becoming a corporation, and the organization is not complete until this fee is paid. This is called an incorporation fee or tax.

§ 652. Alabama.

The charter fee is as follows: Where the proposed capital
[866]

stock does not exceed \$50,000, a fee of \$25; between \$50,000 and \$100,000, a fee of \$50; between \$100,000 and \$250,000, a fee of \$75; between \$250,000 and \$500,000, a fee of \$100; between \$500,000 and \$1,000,000, a fee of \$200; where it exceeds \$1,000,000, a fee of \$250.¹ Upon any increase of the capital stock, the same fee shall be paid upon the whole stock less the fee prescribed for the amount before the increase.²

§ 653. Arizona.

A flat fee of \$10.00 for filing and \$3.00 for certificate of corporation, besides the usual recording fee, is required.³

§ 654. Arkansas.

A flat fee of \$25.00 is provided for filing a charter or articles of association.

§ 655. California.

On a capital stock of \$25,000 or less, a fee of \$15; \$25,000 to \$75,000, a fee of \$25; \$75,000 to \$200,000, a fee of \$50; \$200,000 to \$500,000, a fee of \$75; \$500,000 to \$1,000,000, a fee of \$100; over \$1,000,000, a fee of \$150. And upon a certificate of increase of capital stock, \$5 per thousand; and \$5 for a certificate of decrease.⁴

§ 656. Colorado.

The charter fee is \$20 if the stock does not exceed \$50,000, and twenty cents on each thousand additional; and the same for renewal; and twenty cents per thousand additional on each increase.⁵

§ 657. Connecticut.

A corporation formed under the general law before its cer-

¹ Ala. Code, § 1287.

² *Ibid.* § 1288.

³ Ariz. 1903, ch. 29, § 3.

⁴ Cal. 1901, ch. 70.

⁵ Colo. 1931, ch. 52, §§ 1-3, 9, 10.

tificate of incorporation shall be approved by the Secretary of the State, shall pay to the State treasurer fifty cents on every one thousand dollars of its authorized capital stock up to five million dollars; and it shall pay ten cents upon every one thousand dollars of its authorized capital stock in excess of five million dollars. Whenever any corporation organized under the provisions of this part, or under any former joint stock law of this State, shall increase the amount of its authorized capital stock, it shall pay to the State treasurer, before the certificate of increase shall be approved, fifty cents on each one thousand dollars of such authorized increase until it has paid on a total capital stock of five million dollars; and, upon any authorized increase of capital stock above five million dollars, it shall pay to the State treasurer ten cents on each one thousand dollars; but no payment under the provisions of this section shall be less than twenty-five dollars. Said payments shall be in lieu of all other taxes upon the franchise of the corporation, but shall not be in lieu of any tax imposed by law upon the property of the corporation or upon the shares of its stock in the hands of its stockholders.*

A corporation formed by special act pays a charter fee as follows:

Before any bill or resolution creating a corporation having a capital stock shall be approved or become a law, there shall be paid to the State treasurer, in addition to the fees required by section 10 of the General Statutes, a franchise tax of one dollar on each one thousand dollars of the capital stock with which it is to be organized, but such tax shall in no case be less than fifty dollars. If such bill or resolution shall not be approved or become a law, the treasurer shall return the tax so paid. Whenever any specially chartered corporation shall vote to increase the amount of its capital stock in accordance with the provisions of this act or of any other general or special law affecting it, such corporation shall pay to the

* Conn. 1903, ch. 194, § 61.

state treasurer, before any shares of such increased capital stock shall be issued, a further tax of one dollar on each one thousand dollars of the total increased capital stock so voted, but no additional franchise tax shall be required upon stock upon which the corporation has paid the full franchise tax required by the law in force at the time of such payment. Every officer of any corporation subject to any of the provisions of this section, who shall sign or issue any certificate of stock on which the tax imposed by this section has not been paid, shall be fined one thousand dollars, or imprisoned not more than two years, or both.⁷

§ 658. Delaware.

The charter fee is fifteen cents for each \$1,000, with a minimum of \$20; and at the same rate upon an increase or consolidation.⁸ Upon a renewal of charter, a fee of \$20 is paid.⁹

§ 659. District of Columbia.

There appears to be no charter fee.¹⁰

§ 660. Florida.

The charter fee is graded as follows: Two dollars upon each one thousand dollars of the capital stock of such corporation; *Provided*, That no such charter fee shall be less than five dollars nor more than two hundred and fifty dollars; *And provided further*, That all corporations hereafter created by special act of the legislature shall pay into the state treasury the special charter fee provided for in this section, before they shall be deemed legally incorporated; *And further provided*, That no corporation shall be authorized to increase its capital stock without paying to the Secretary of State the charter

⁷ *Ibid.* § 57.

⁸ Del. 1903, p. 820, § 129.

⁹ *Ibid.* p. 822, § 133.

¹⁰ See Code, §§ 552, 605.

§ 663.] FOREIGN CORPORATIONS. [Chap. XXVII.

fees as provided by the foregoing schedule upon such increase of stock.¹¹

§ 661. Georgia.

The Clerk of the Court shall receive the usual fees allowed for similar services in other cases.¹² Certain public service companies pay a fee of one hundred dollars.¹³

§ 662. Idaho.

The charter fee is as follows:

- (a) When the authorized capital stock does not exceed \$25,000..... \$5.00
- (b) When the authorized capital stock exceeds \$25,000 and does not exceed \$100,000.... 10.00
- (c) When the authorized capital stock exceeds \$100,000 and does not exceed \$500,000... 20.00
- (d) When the authorized capital stock exceeds \$500,000..... 25.00¹⁴

§ 663. Illinois.

Charter fees are provided for as follows:

"All companies and corporations hereafter organized under the laws of the State of Illinois shall pay to the Secretary of State, before there shall issue a license to incorporate the same, fees as follows: All companies having a capital stock of \$2,500 and under shall pay the sum of \$30, and all companies having a capital stock of over \$2,500 and not over \$5,000 shall pay the sum of \$50, and all companies having a capital stock of over \$5,000 shall pay in addition to the said sum of \$50 the sum of \$1 for each \$1,000 of capital stock over \$5,000. All corporations at present organized and doing business under the laws of this State, or that may be organized in the future,

¹¹ Fla. Rev. Stat. § 2125.

¹² Ga. Code, § 2350, cl. 4.

¹³ Ga. 1893, Nos. 301, § 3; 373, § 1; 363 § 1; 348, § 1; 364, § 1.

¹⁴ Ida. 1901, p. 141.

that may hereafter increase their capital stock, shall pay as a fee in addition to all other fees at present required by law the sum of \$1 for each \$1,000 increase of such capital stock: *Provided*, that no company now incorporated or which may be hereafter incorporated under the laws of this State, shall acquire a franchise by increase of capital stock to \$5,000 for a less sum than \$50 and over \$5,000 in addition to the said sum of \$50, the sum of \$1 for each \$1,000 increase of capital stock, and \$1 for filing certificate of such increase.¹⁵

§ 664. Indiana.

The charter fee where the capital stock is \$10,000 or less is \$10. For all over \$10,000, one-tenth of one per cent. on the capital stock. Fees in the same ratio are collected on the filing of resolution increasing the capital stock. On articles of consolidation, fees are charged as for new corporations. For mutual insurance, benefit orders, etc., where there is no capital stock, \$25. For building and loan associations, the sum of \$5 for each fifty thousand dollars of capital stock or fractional part thereof. For religious, literary, etc., corporations, without capital stock, \$5. For filing certificate of change of name, amendment of articles, or other document not enumerated, \$5.¹⁶

§ 665. Iowa.

For its certificate of incorporation a corporation pays a fee of twenty-five dollars, and, for all authorized stock in excess of ten thousand dollars, an additional fee of one dollar per thousand. Should any corporation increase its capital stock, it shall pay a fee to the Secretary of State of one dollar for each one thousand dollars of such increase.¹⁷ The same fee is payable upon a renewal of the charter.¹⁸

¹⁵ Ill. 1895, p. 132.

¹⁶ Ind. Corp. L. § 19.

¹⁷ Ia. Code, § 1610.

¹⁸ *Ibid.* § 1618.

§ 666. Kansas.

An application fee of \$25 is required, and a charter fee of one-tenth of one per cent. of its authorized capital, upon the first one hundred thousand dollars of its capital stock, or any part thereof; and upon the next four hundred thousand dollars, or any part thereof, one-twentieth of one per cent.; and for each million or major part thereof over and above the sum of five hundred thousand dollars, two hundred dollars.¹⁹

§ 667. Kentucky.

A charter fee is provided as follows:

"Every corporation which may be incorporated by or under the laws of this State, having a capital stock divided into shares, shall pay into the state treasury one-tenth of one per centum upon the amount of capital stock which such corporation is authorized to have, and a like tax upon any subsequent increase thereof. Such tax shall be due and payable on the incorporation of the company and on the increase of the capital thereof, and no such corporation shall have or exercise any corporate powers until the tax shall have been paid; and upon payment they shall file a statement thereof with the Secretary of State."²⁰

§ 668. Louisiana.

There appears to be no provision for payment of a charter fee.²¹

§ 669. Maine.

The corporation shall pay the Attorney General and Secretary of State five dollars each for their services in advance; and before said certificate is filed in the office of the Secretary of State, when the amount of capital stock does not exceed ten thousand dollars, it shall also pay to the Treasurer of State for

¹⁹ Kan. Stat. §§ 1261, 1264.

²⁰ Ky. Stat. § 4226.

²¹ See La. 1902, No. 163.

the use of the State the sum of ten dollars; when the amount of the capital stock exceeds ten thousand dollars and does not exceed five hundred thousand dollars, it shall pay to the Treasurer of State for the use of the State, the sum of fifty dollars; when the amount of the capital stock exceeds five hundred thousand dollars, it shall pay to the Treasurer of State for the use of the State ten dollars for each one hundred thousand dollars of the capital stock.²²

For increase to amount not over \$500,000, . . . \$40 00

For increase over \$500,000, on each \$100,000, . . . 10 00²³

Corporations created by special act pay the following fee:²⁴

For capital stock up to \$5,000, . . . \$15 00

Over \$5,000 but not over \$10,000, . . . 25 00

Over \$10,000 but not over \$50,000, . . . 75 00

Over \$50,000 but not over \$100,000, . . . 125 00

For each additional \$100,000, . . . 60 00

§ 670. Maryland.

An incorporation fee of one-eighth of one per cent. on the amount of the authorized capital stock and on each increase is provided in the case of new corporations.²⁵ This must be paid annually after two years until the corporation begins business.

§ 671. Massachusetts.

The charter fee for business corporations is one-fortieth of one per cent. of the total amount of the authorized capital stock as fixed by the articles of organization; but not in any case less than ten dollars.²⁶ Upon any increase in the capital stock the same fee is paid.²⁷ Other corporations pay a charter

²² Me. Rev. Stat. ch. 47, § 8, ch. 117, § 17.

²³ *Ibid.* ch. 47, § 39.

²⁴ *Ibid.* ch. 47, § 4.

²⁵ Md. Gen. L. Art. 81, § 88 a; Md. 1900, ch. 272.

²⁶ Mass. 1903, ch. 437, § 88.

²⁷ *Ibid.* § 89.

fee of one-twentieth of one per cent. of the amount of the capital stock as fixed by the agreement of association; but not less in any case than five nor more than two hundred dollars. For filing a certificate of increase of the capital stock one-twentieth of one per cent. of the amount by which the capital is increased; but the amount so to be paid shall not, if added to the amount previously paid for filing and recording certificates [of incorporation] exceed two hundred dollars; and a corporation which has so paid two hundred dollars shall pay a fee of one dollar for each certificate thereafter filed and recorded.²⁸

§ 672. Michigan.

A charter or franchise fee of one-half of one mill upon each dollar of the authorized capital stock, and a proportionate fee upon each increase; but the original franchise fee is in no case to be less than five dollars.²⁹

§ 673. Minnesota.

A charter fee is payable upon the creation or renewal of a charter of \$50 for the first fifty thousand dollars of capital stock, and \$5 for each additional ten thousand dollars; and \$5 per ten thousand dollars for each increase of capital.³⁰

§ 674. Mississippi.

The charter fee is as follows: When the capital stock does not exceed \$10,000, \$20; when capital stock exceeds \$10,000 and does not exceed \$30,000, \$40; when capital stock exceeds \$30,000 and does not exceed \$50,000, \$60; when the capital stock exceeds \$50,000, the fee shall be one-tenth of one per cent., provided that no fee for recording any charter shall be more than \$250.³¹

²⁸ Mass. Rev. L. ch. 110, § 86.

²⁹ Mich. 1891, ch. 182.

³⁰ Minn. 1902, ch. 206, § 2.

³¹ Miss. 1900, ch. 45, § 1.

§ 675. Missouri.

A charter fee is required by the Constitution as follows:

"No corporation, company or association other than those formed for benevolent, religious, scientific or educational purposes, shall be created or organized under the laws of this state, unless the persons named as corporators shall, at or before the filing of the articles of association or incorporation, pay into the state treasury fifty dollars for the first fifty thousand dollars or less of capital stock, and a further sum of five dollars for every additional ten thousand dollars of its capital stock. And no such corporation, company or association shall increase its capital stock without first paying into the treasury five dollars for every ten thousand dollars of increase: *Provided*, that nothing contained in this section shall be construed to prohibit the general assembly from levying a further tax on the franchises of such corporation."³²

§ 676. Montana.

A charter fee is provided as follows:

"For recording and filing each certificate of incorporation and each certificate of increase of capital stock, the following amounts shall be charged:

"Amounts up to \$100,000.00, 25 cents for \$1,000.00.

"Additional from \$100,000.00 to \$250,000.00, 20 cents per \$1,000.00.

"Additional from \$250,000.00 to \$500,000.00, 15 cents per \$1,000.00.

"Additional from \$500,000.00 to \$1,000,000.00, 10 cents per \$1,000.00.

"Additional over \$1,000,000.00, 5 cents per \$1,000.00.

"Providing, that no fee for filing any articles of incorporation or increase of capital stock shall be less than \$10.00, except religious societies, churches, and organizations for re-

³² Mo. Const. Art. 10, § 21; Rev. Stat. ch. 12, § 956.

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ligious purposes, not having a capital stock, and not being organized for the purpose of profit." ³³

§ 677. Nebraska.

A charter fee is charged upon incorporation or consolidation of ten dollars, and if the authorized capital stock exceeds one hundred thousand dollars, ten cents for each thousand dollars in excess of one hundred thousand. Upon an increase of capital stock, \$5.00, and ten cents for each thousand dollars in excess of the amount of capital stock originally authorized.³⁴

§ 678. Nevada.

The following charter fee is provided:

For certificate or articles of incorporation, fifteen (15) cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than fifteen dollars; increase of capital stock, fifteen (15) cents for each thousand dollars of the total increase authorized, but in no case less than ten dollars; consolidation and merger of corporations, fifteen (15) cents for each thousand dollars of capital authorized, beyond the total authorized capital of the corporations merged or consolidated, but in no case less than ten dollars; extension or renewal of corporate existence of any corporation, one-half that required for the original certificate or articles of organization or incorporation by this Act.³⁵

§ 679. New Hampshire.

The provision for a charter fee is as follows: Within thirty days after the close of any session of the legislature, parties procuring the passage of any act at that session incorporating, or renewing the corporate powers of, a corporation which is to carry on its business and have its principal office in this State, shall pay to the State Treasurer a sum according to the

³³ Mont. Polit. Code, § 410, cl. 4.

³⁴ Neb. Comp. Stat. § 4991, cl. 3.

³⁵ Neb. 1903, ch. 121, § 102.

nature of the corporation, as follows: savings banks, the sum of one hundred dollars; other banks one-tenth of one per cent., and railroads and insurance companies one-twentieth of one per cent., upon the largest amount of capital authorized by the act; other corporations having for their object a division of profits, the sum of fifty dollars; and for every act in amendment of any such act the sum of twenty-five dollars.

Every corporation which is not to carry on its business and have its principal office in this State, obtaining a charter or an act increasing its capital stock from the legislature or organizing under the general laws of the State, shall pay to the State Treasurer, within thirty days after the close of the session if its charter is special, or at the time of recording its articles of association if it is formed under the provisions of the Public Statutes, a charter fee on the largest amount of the capital or increase of capital authorized by its charter or articles of association as follows: Where the amount of said capital or increase does not exceed twenty-five thousand dollars, ten dollars; where it exceeds twenty-five thousand dollars and does not exceed one hundred thousand dollars, twenty-five dollars; where it exceeds one hundred thousand dollars and does not exceed five hundred thousand dollars, fifty dollars; where it exceeds five hundred thousand dollars and does not exceed one million dollars, one hundred dollars; where it exceeds one million dollars, two hundred dollars.³⁶

§ 680. New Jersey.

The fee for incorporation is twenty cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty-five dollars; increase of capital stock, twenty cents for each thousand dollars of the total increase authorized, but in no case less than twenty dollars; consolidation and merger of corporations, twenty cents for each thousand dollars of capital authorized, beyond the total authorized capital of the corporations merged or consolidated, but in no

³⁶ N. H. Pub. Stat. ch. 14, §§ 4, 5.

case less than twenty dollars; extension or renewal of corporate existence of any corporation, the same as required for the original certificate of organization of this act; dissolution of corporation, change of name, change of nature of business, amended certificates of organization (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of par value or number of shares, twenty dollars.³⁷

§ 681. New Mexico.

The charter fee is as follows:

For railroad or other corporations formed for pecuniary profit, ten cents for each and every thousand dollars of capitalization, and a like fee upon each subsequent increase of capital, but in no case less than twenty-five dollars (\$25.00).³⁸

§ 682. New York.

The organization tax is one-twentieth of one per cent. of the authorized capital stock. The same amount is paid upon increase of capital stock, and in the case of consolidation on the amount of the new capital in excess of the combined capital of the constituent corporations. The minimum fee is one dollar.³⁹

§ 683. North Carolina.

A charter fee is charged of twenty cents for each thousand dollars of capital stock, but in no case less than \$25.00; on an increase of capital stock at the same rate, but in no case less than \$20.00; on extension or renewal of corporate existence the same as on original incorporation.⁴⁰ An incorporation or amendment of charter by special act of legislature requires a charter fee twice as large as in the preceding section.⁴¹

³⁷ N. J. Corp. Law, § 114, 1893, P. L. p. 448.

³⁸ N. Mex. 1903, ch. 114.

³⁹ N. Y. 1901, ch. 448.

⁴⁰ N. C. 1901, ch. 2, § 96.

⁴¹ *Ibid.* § 97; 1903, ch. 93, § 1.

§ 684. North Dakota.

The charter fee charged for filing articles of incorporation is the sum of fifty dollars for the first fifty thousand dollars, or fraction thereof, of the capital stock of such corporation, and the further sum of five dollars for every additional ten thousand dollars, or fraction thereof, of its capital stock.⁴² For an increase of capital stock the fee is five dollars for every ten thousand dollars, or fraction thereof, of such increase in the capital stock of such corporation.⁴³

§ 685. Ohio.

The charter fee where the capital stock is ten thousand dollars or under is ten dollars; where the capital stock is over ten thousand dollars, one-tenth of one per cent. on the authorized capital stock. The same fee is imposed where there is an increase of capital stock; and the same fee is exacted upon a consolidation of corporations, without regard to any charter fee paid by the constituent corporations.⁴⁴

§ 686. Oklahoma.

The charter fee is five dollars.⁴⁵

§ 687. Oregon.

The charter fee is as follows:

Where the capital stock shall not exceed \$5,000, a fee of \$10; where the capital stock shall exceed \$5,000 and shall not exceed \$10,000, a fee of \$15; where the capital stock shall exceed \$10,000 and shall not exceed \$25,000, a fee of \$20; where the capital stock shall exceed \$25,000 and shall not exceed \$50,000, a fee of \$25; where the capital stock shall exceed \$50,000 and shall not exceed \$100,000, a fee of \$35; where the capital stock shall exceed \$100,000 and shall not exceed \$250,000, a fee of

⁴² Rev. Code, § 2865.

⁴³ *Ibid.* § 2866.

⁴⁴ Rev. Stat. § 148 a, cls. 1-3.

⁴⁵ Okla. Stat. § 2900.

\$45; where the capital stock shall exceed \$250,000 and shall not exceed \$500,000, a fee of \$60; where the capital stock shall exceed \$500,000 and shall not exceed \$1,000,000, a fee of \$75; where the capital stock shall exceed \$1,000,000 and shall not exceed \$2,000,000, a fee of \$90; where the capital stock shall exceed \$2,000,000, a fee of \$100.⁴⁶

§ 688. Pennsylvania.

All domestic corporations on their creation pay a "bonus" of one-third of one per cent. upon the amount of authorized capital stock, and the same bonus on an authorized increase of the capital stock.⁴⁷

§ 689. Rhode Island.

Before organization a corporation shall pay one hundred dollars, and in addition one-tenth of one per cent. on any amount of authorized capital stock over one hundred thousand dollars; and on any increase of capital stock it shall pay one-tenth of one per cent. of such increase.⁴⁸

§ 690. South Carolina.

Fees for incorporation are as follows: On each charter issued or renewed, the sum of one mill upon each dollar of the capital stock authorized up to and including one hundred thousand dollars; the sum of one-half of a mill upon each dollar of the capital stock exceeding one hundred thousand dollars and up to and including one million dollars; and the sum of one-fourth of a mill upon each dollar of the capital stock exceeding one million dollars.⁴⁹

§ 691. South Dakota.

A fee of \$10.00 is charged.⁵⁰

⁴⁶ Ore. 1903, p. 39, § 1.

⁴⁷ Pa. 1899, P. L. 189, § 1.

⁴⁸ R. I. Gen. L. ch. 29, § 16.

⁴⁹ S. Car. Code, § 1888.

⁵⁰ S. Dak. Stat. § 1911.

§ 692. Tennessee.

An organization tax is imposed of one-tenth of one per cent. of the capital stock fixed in the charter, and the same upon any increase of capital stock.⁵¹ On consolidation the organization tax is paid upon the whole amount of the new capital stock.⁵² In addition to the organization tax, there is imposed a fee for recording the charter or any amendment of it of ten dollars; or for filing articles of consolidation twenty-five dollars.⁵³ For filing an amendment to a charter of a corporation created under general laws, ten dollars; of a corporation created by special act, or by any chancery court, one hundred dollars.⁵⁴

§ 693. Texas.

The charter fee is as follows: For each and every charter, amendment or supplement thereto, of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line, or street railway, or express company, authorized or required by law to be recorded in said department, a fee of one hundred dollars, to be paid when said charter is filed; provided, that if the authorized capital stock of said corporation shall exceed one hundred thousand dollars, it shall be required to pay an additional fee of twenty-five dollars for each one hundred thousand dollars authorized capital stock, or fractional part thereof, after the first; . . . for each and every charter, amendment or supplement thereto, of a private corporation, created for any other purpose, intended for mutual profit or benefit, a fee of twenty-five dollars shall be paid when the said charter is filed for record; provided, that if the authorized capital stock of said corporation shall exceed ten thousand dollars, it shall be required to pay an additional fee of five dollars for each additional ten thousand dollars of its

⁵¹ Tenn. 1899, ch. 432, § 9.

⁵² *Ibid.* § 10.

⁵³ *Ibid.* ch. 2, § 1.

⁵⁴ *Ibid.* ch. 209, § 1.

authorized capital stock, or fractional part thereof, after the first; for each and every charter, amendment or supplement thereto, taken out under chapter fourteen, title twenty-one (channel and dock corporations), a fee of one hundred dollars shall be paid to the Secretary of State, for the use and benefit of the State, which shall be paid when the charter, amendment or supplement thereto is filed for record.⁵⁵

§ 694. Utah.

A charter fee is charged, on filing articles of incorporation or amendment increasing the capital stock, of twenty-five cents on each one thousand dollars of capital stock.⁵⁶

§ 695. Vermont.

A charter fee is required by the following statute: Any body or persons seeking incorporation by special act of the Legislature shall, before a bill is introduced for such purpose, deposit with the State Treasurer for the use of the State the sum of twenty-five dollars, if such bill does not provide for any capital stock or if the capital stock provided for by such bill does not exceed ten thousand dollars; fifty dollars in case such capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars; one hundred dollars if such capital stock exceeds fifty thousand dollars and does not exceed two hundred thousand dollars; two hundred dollars if such capital stock exceeds two hundred thousand dollars and does not exceed five hundred thousand dollars; three hundred dollars if such capital stock exceeds five hundred thousand dollars and does not exceed one million dollars, and five hundred dollars if such capital stock exceeds one million dollars. If a charter is refused, said deposit shall be returned to the person making it.⁵⁷

Whenever articles of association are transmitted to the Secretary of State, under provisions of chapter 165, Vermont

⁵⁵ Tex. Rev. Stat. Art. 2439.

⁵⁶ Utah Corp. Supp. p. 31.

⁵⁷ Vt. 1898, ch. 19, § 1.

Statutes, there shall be transmitted therewith for the use of the State the sum of twenty-five dollars, if such articles do not provide for capital stock. If such articles provide for capital stock not exceeding five thousand dollars, the sum of ten dollars shall be so transmitted; if such capital stock exceed five thousand dollars and does not exceed ten thousand dollars, the sum of twenty-five dollars shall be so transmitted; if exceeding ten thousand dollars and not exceeding fifty thousand dollars, the sum of fifty dollars shall be so transmitted; if exceeding fifty thousand dollars and not exceeding two hundred thousand dollars, the sum of one hundred dollars shall be so transmitted; if exceeding two hundred thousand dollars and not exceeding five hundred thousand dollars, the sum of two hundred dollars shall be so transmitted; if exceeding five hundred thousand dollars and not exceeding one million dollars, the sum of three hundred dollars shall be so transmitted; if more than one million dollars, the sum of five hundred dollars shall be so transmitted. In case said articles are not recorded by the Secretary of State, but are returned to the parties transmitting them, the money transmitted therewith shall be returned with such articles.⁵⁸

In an increase of stock the charter fee shall be the difference between the fee required upon the old and upon the new amount.⁵⁹

§ 696. Virginia.

A charter fee is paid as follows: For a company chartered by special act whose maximum authorized stock is five thousand dollars or under, twenty-five dollars; five to ten thousand dollars, fifty dollars; ten to twenty-five thousand dollars, seventy-five dollars; twenty-five to fifty thousand dollars, one hundred twenty-five dollars; fifty to one hundred thousand dollars, two hundred dollars; one to three hundred thousand dollars, three hundred twenty-five dollars; three to five hundred

⁵⁸ *Ibid.* § 2.

⁵⁹ Vt. 1900, ch. 15, § 1.

thousand dollars, four hundred fifty dollars; five to eight hundred thousand dollars, five hundred seventy-five dollars; eight hundred thousand to one million dollars, seven hundred fifty dollars; one to ten million dollars, one thousand dollars; ten to twenty million dollars, one thousand two hundred fifty dollars; twenty to thirty million dollars, one thousand five hundred dollars; thirty to forty million dollars, one thousand seven hundred fifty dollars; forty to fifty million dollars, two thousand dollars; fifty to sixty million dollars, two thousand two hundred fifty dollars; sixty to seventy million dollars, two thousand five hundred dollars; seventy to eighty million dollars, two thousand seven hundred fifty dollars; eighty to ninety million dollars, three thousand dollars; over ninety million dollars, five thousand dollars. On an increase the fee paid shall be the fee paid on the new capital minus the fee already paid.⁶⁰

For a corporation chartered under the general laws the fees are as follows: Where the maximum authorized capital is five thousand dollars or under, fifteen dollars; five to ten thousand dollars, thirty dollars; ten to twenty-five thousand dollars, forty-five dollars; twenty-five to fifty thousand dollars, seventy-five dollars; fifty to one hundred thousand dollars, one hundred twenty dollars; one to three hundred thousand dollars, one hundred ninety-five dollars; three to five hundred thousand dollars, two hundred seventy dollars; five to eight hundred thousand dollars, three hundred forty-five dollars; eight hundred thousand to one million dollars, four hundred fifty dollars; over one million dollars, six hundred dollars; with the same provision as in the preceding section for a fee upon increase of capital stock.⁶¹

§ 697. Washington.

A charter fee of ten dollars is charged.⁶²

⁶⁰ Va. 1902, ch. 509, § 1.

⁶¹ *Ibid.* § 2.

⁶² Wash. 1897, p. 134, § 1.

§ 698. West Virginia.

A fee of four dollars is payable for issuing a certificate of incorporation.⁶³

§ 699. Wisconsin.

A charter fee is provided as follows:

For filing the articles of incorporation of corporations for the manufacture of beet sugar, or of butter, cheese or other dairy products there shall be paid the Secretary of State ten dollars and for filing an amendment to such articles five dollars; for filing in his office the articles of any other corporation, except as is otherwise specifically provided in these statutes, the corporations shall pay twenty-five dollars if the capital stock of the corporation is fixed therein at twenty-five thousand dollars or less, and one dollar for each additional one thousand dollars of capital stock; and every other corporation organized and doing business under the laws of this State which may hereafter increase its capital stock shall pay as a fee therefor one dollar for each one thousand dollars of increase, and, except as above provided, for filing any amendment to its articles, other than for the purpose of increasing its capital stock, shall pay ten dollars: Provided further that all corporations, organized exclusively for the purpose of mining, smelting and owning mines and minerals in the State of Wisconsin, shall pay for filing its articles of incorporation, to the Secretary of State, the sum of twenty-five dollars if the capital stock is fixed at twenty-five thousand dollars or less, and one dollar for each additional one thousand dollars of its capital stock up to one hundred and fifty thousand dollars of capital stock; and on all such corporations with a capital stock in excess of one hundred and fifty thousand dollars a fee of one hundred and fifty dollars only shall be paid to the Secretary of State upon filing its articles.⁶⁴

⁶³ W. Va. Code, ch. 54, § 18.

⁶⁴ Wis. 1901, ch. 238, § 1.

§ 700. Wyoming.

The following are the fees prescribed by law, and must be paid in advance:

For filing and recording certificates of incorporation with capital stock of not more than \$5,000, \$5.00; when capital stock exceeds \$5,000, but does not exceed \$100,000, \$10.00. When capital stock exceeds \$100,000 a fee of five cents is charged for each \$1,000 of capital in excess of \$100,000, making \$5.00 for the second and each additional \$100,000 of capital stock.⁶⁵

⁶⁵ Wyo. Rev. Stat. § 3030.

CHAPTER XXVIII.

PRIVILEGE TAX.

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| § 701. Nature of privilege tax. | § 714. Missouri. |
| 702. States imposing a tax equal to incorporation tax. | 715. Montana. |
| 703. States imposing no privilege tax. | 716. Nevada. |
| 704. Special provisions; Colorado. | 717. New Jersey. |
| 705. Connecticut. | 718. New York. |
| 706. Delaware. | 719. North Dakota. |
| 707. Illinois. | 720. Ohio. |
| 708. Indiana. | 721. Oregon. |
| 709. Maryland. | 722. Pennsylvania. |
| 710. Massachusetts. | 723. South Dakota. |
| 711. Michigan. | 724. Tennessee. |
| 712. Minnesota. | 725. Texas. |
| 713. Mississippi. | 726. Utah. |
| | 727. West Virginia. |
| | 728. Wisconsin. |

§ 701. Nature of privilege tax.

In most States a foreign corporation, desiring to come into the State to do business, is taxed for the privilege of doing so. This tax, which is paid once for all at the time the foreign corporation first comes into the State, corresponds closely to the incorporation tax imposed upon domestic corporations; and indeed if there were no other reason for its imposition it would be necessary in order to prevent foreign corporations, which are not obliged to pay the incorporation tax, from having in that respect an undue advantage over domestic corporations. This tax imposed upon foreign corporations is called a privilege tax.

§ 702. States imposing a tax equal to incorporation tax.

In several States a foreign corporation is to pay a tax for

the privilege of doing business within the State equal to the incorporation tax for domestic corporations.

This is the case in Alabama,¹ Arizona,² Arkansas,³ California,⁴ Colorado,⁵ Idaho,⁶ Iowa,⁷ Kansas,⁸ Michigan,⁹ Nebraska,¹⁰ New Mexico,¹¹ Oklahoma,¹² South Carolina,¹³ Virginia,¹⁴ Washington,¹⁵ Wyoming.¹⁶

§ 703. States imposing no privilege tax.

No provision appears to be made for payment of a fee for doing business by a foreign corporation in the District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, New Hampshire, North Carolina, Rhode Island. In Vermont the annual license fee takes the place of any franchise tax.

§ 704. Special provisions: Colorado.

For capital stock up to \$50,000,	. . . . .	\$30 00
For each additional \$1,000,	. . . . .	30
For increase, on each \$1,000,	. . . . .	30
For filing certified copy of foreign laws,	. . . . .	5 00
For filing designation of agent,	. . . . .	5 00
For certificate of full payment of fees and taxes,		5 00 ¹⁷

¹ Ala. Code, § 1321.

² Ark. 1899, Act 19, § 2.

³ Ariz. 1903, ch. 29, §§ 1, 3.

⁴ Cal. 1901, ch. 93.

⁵ Colo. 1897, ch. 51.

⁶ Ida. Civ. Code, § 2126.

⁷ Ia. Code, § 1637.

⁸ Kan. Gen. Stat. § 1267.

⁹ Mich. 1901, No. 206.

¹⁰ Neb. Comp. Stat. § 4991, cl. 3.

¹¹ N. Mex. 1903, ch. 114.

¹² Okla. Stat. § 2900.

¹³ This appears to be the rule: compare S. Car. Rev. Stat. §§ 1467, 1471, 1901, ch. 399, § 1, Code, § 1888.

¹⁴ Va. 1902, ch. 509, § 1 (same as corporation created under general laws).

¹⁵ Wash. 1897, p. 134, § 1.

¹⁶ Wyo. Rev. Stat. § 3030.

¹⁷ Colo. 1901, ch. 52, §§ 4, 5, 10.

§ 705. Connecticut.

For filing its certificate of incorporation a foreign corporation pays \$10.00, and \$5.00 for filing its statement of condition.¹⁸

§ 706. Delaware.

A foreign corporation pays a fee of \$50.00.¹⁹

§ 707. Illinois.

A foreign corporation pays the same fee as a domestic corporation on the proportion of its capital stock represented by its property located and business done within the State.²⁰

§ 708. Indiana.

A foreign corporation pays upon the first ten thousand dollars (\$10,000.00) or under, of the proportion of its capital stock represented by its property and business in the State of Indiana, twenty-five dollars (\$25.00), and upon the proportion of its capital stock represented by its property and business in the State of Indiana, over and above ten thousand dollars (\$10,000.00), incorporating taxes and fees equal to those required of similar corporations formed within and under the laws of this State.²¹

§ 709. Maryland.

A foreign corporation pays a fee of \$25.²²

§ 710. Massachusetts.

Business corporations of other States pay \$25;²³ other foreign corporations, \$10.²⁴

¹⁸ Conn. Gen. Stat. § 4811.

¹⁹ Del. 1893, ch. 703.

²⁰ Ill. Rev. Stat. ch. 32, § 67c.

²¹ Ind. 1903, ch. 127.

²² Md. 1898, ch. 270.

²³ Mass. 1903, ch. 437, § 91.

²⁴ Mass. Rev. L. ch. 126, § 20.

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§ 711. Michigan.

A foreign corporation pays one-half a mill on each dollar of the proportion of its capital stock represented by the property owned and used and business transacted in Michigan, but in no case less than \$25.00.²⁵

§ 712. Minnesota.

A foreign corporation pays \$50 for the first fifty thousand dollars and \$5 for each additional ten thousand dollars of that proportion of the capital stock which is represented by its property located and business transacted within the State.²⁶

§ 713. Mississippi.

A foreign corporation pays a fee of \$15.00.²⁷

§ 714. Missouri.

A foreign corporation pays a license fee of \$10.00,²⁸ and in addition on its capital invested in Missouri, fifty dollars on the first fifty thousand dollars, and five dollars for each additional ten thousand.²⁹

§ 715. Montana.

A foreign corporation pays a fee of \$20.00.³⁰

§ 716. Nevada.

A foreign corporation pays a fee of \$10.00.³¹

§ 717. New Jersey.

A foreign corporation pays a fee of \$10.00.³²

²⁵ Mich. 1901, ch. 206, § 1.

²⁶ Minn. 1899, ch. 69, § 3.

²⁷ Miss. 1900, ch. 45, § 1.

²⁸ Mo. Rev. Stat. § 1317.

²⁹ *Ibid.* § 1025.

³⁰ Mont. 1899, p. 44.

³¹ Nev. 1903, ch. 121, § 102.

³² N. J. Corp. L. § 114.

§ 718. New York.

Every foreign corporation (except banking and insurance companies and building and loan associations) pays a license fee of one-eighth of one per cent. on the capital stock employed within the State for the privilege of carrying on business within the State.³³

§ 719. North Dakota.

The fee for filing copy of articles of incorporation and appointment of Secretary of State as attorney for service is \$25.00.³⁴

§ 720. Ohio.

Every foreign corporation for profit doing business within the State pays a tax for the privilege of exercising its franchises within the State of one-tenth of one per cent. on the proportion of the authorized capital stock of the corporation represented by property owned and used and business transacted within the State; "being the same fee required to be paid [on their entire capital stock] by corporations formed under the laws of Ohio."³⁵

§ 721. Oregon.

A foreign corporation pays a fee of \$50 for filing the required papers before engaging in business.³⁶

§ 722. Pennsylvania.

Foreign corporations "whose principal office or chief place of business is located in this Commonwealth, or which have any part of their capital actually employed wholly within this State" pay "a bonus of one-third of one per centum upon the amount of their capital actually employed or to be employed

³³ N. Y. 1901, ch. 558.

³⁴ N. Dak. Rev. Code, § 3261 note.

³⁵ Oh. Rev. Stat. § 148 c.

³⁶ Ore. 1903, p. 39, § 7.

wholly within the State of Pennsylvania, and a like bonus upon each subsequent increase of capital so employed." ³⁷

§ 723. South Dakota.

A foreign corporation pays a fee of \$10.00.³⁸

§ 724. Tennessee.

A foreign corporation on filing its charter pays the following fees: On a capital stock of \$100,000 or less, \$50; one hundred thousand to two hundred fifty thousand, \$100; two hundred fifty thousand to five hundred thousand, \$150; five hundred thousand to one million dollars, \$200; over a million dollars, \$250. But if the foreign corporation desires to locate its principal office and do all its business in and from Tennessee, and have its main property holdings there, it must pay a privilege tax of one-tenth of one per cent. on its entire capital stock, like a domestic corporation.

An insurance company is credited with the amount of fees paid to the Insurance Commissioner on entering the State.³⁹

§ 725. Texas.

Each foreign corporation shall pay fees as follows: if its capital stock be one hundred thousand dollars or less, a fee of twenty-five dollars to procure a permit; if its capital stock be more than one hundred thousand dollars, and less than five hundred thousand dollars, it shall pay a fee of fifty dollars; if its capital stock be five hundred thousand dollars, and less than one million dollars, it shall pay a fee of one hundred dollars; if its capital stock exceed one million dollars, it shall pay a fee of two hundred dollars.⁴⁰

³⁷ Pa. 1901, P. L. 150, § 1. This affects only such corporations as come into the State to do business after the passage of the statute. *Com. v. Danville Bessemer Co.*, 207 Pa. 302, 56 Atl. 871.

³⁸ Code, § 1911.

³⁹ Tenn. 1903, ch. 239, § 2.

⁴⁰ Tex. Rev. Stat. Art. 2439.

CHAPTER XXIX.

TAXATION OF SHARES OF STOCK.

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| <p>§ 731. Shares and capital stock both taxable.</p> <p>732. Double taxation of this sort often forbidden.</p> <p>733. Exemptions whether applicable.</p> <p>734. Stock taxable at owner's domicil.</p> | <p>§ 735. Taxation of stock in foreign corporation.</p> <p>736. Stock taxable at domicil of corporation.</p> <p>737. Transfer of stock to avoid taxation.</p> <p>738. Transfer or inheritance tax or probate duty.</p> |
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§ 731. Shares and capital stock both taxable.

The share of stock held by the stockholder and the property owned by the corporation are different things; and each may be taxed without technical double taxation.¹

"The capital stock of a corporation and the shares into which such stock may be divided and held by individual shareholders are two distinct pieces of property. The capital stock and the shares of stock in the hands of the shareholders may both be taxed, and it is not double taxation."² "As the result of its application, it is unquestioned that much property has

¹ *Jefferson County Sav. Bank v. Hewitt*, 112 Ala. 546, 20 So. 926; *State v. Travellers' Ins. Co.*, 70 Conn. 590, 40 Atl. 465, 66 A. S. R. 138; *Illinois Nat. Bank v. Kinsella*, 201 Ill. 31, 66 N. E. 338; *Cook v. Burlington*, 59 Ia. 251, 13 N. W. 113, 44 A. R. 679; *Home Assur. Co. v. Assessors*, 42 La. Ann. 1131, 8 So. 481; *Bradley v. Bauder*, 36 Oh. St. 28, 38 A. R. 547; *Providence & W. R. R. v. Wright*, 2 R. I. 459, 464; *State v. Bank of Commerce*, 95 Tenn. 221, 31 S. W. 993; *Com. v. Charlottesville P. B. & L. Co.*, 90 Va. 790, 20 S. E. 364, 44 A. S. R. 950; *Second Ward Sav. Bank v. Milwaukee*, 94 Wis. 587, 69 N. W. 359.

² *Peckham, J.*, in *Bank of Commerce v. Tennessee*, 161 U. S. 134, 146, 40 L. ed. 645.

been brought within the range of the taxing power which otherwise would have escaped taxation." ³

But though this practice is not unconstitutional as double taxation, it is inequitable as in effect making a man pay twice for the services of the government. "In corporations four elements of taxable value are sometimes found: 1, franchises; 2, capital stock in the hands of the corporation; 3, corporate property; and 4, shares of the capital stock in the hands of the individual stockholders. Each of these is, under some circumstances, an appropriate subject of taxation; and it is no doubt within the power of a State, when not restrained by constitutional limitations, to assess taxes upon them in a way to subject the corporation or the stockholders to double taxation. Double taxation is, however, never to be presumed. Justice requires that the burdens of government shall, as far as is practicable, be laid equally on all, and if property is taxed once in one way, it would ordinarily be wrong to tax it again in another way, when the burden of both taxes falls on the same person. Sometimes tax laws have that effect; but if they do, it is because the legislature has unmistakably so enacted. The presumptions are against such an imposition." ⁴

The method pursued in several States is to tax the corporation upon its tangible property, subtract that from the total value of the shares of stock, and tax each stockholder for his share of the balance, if any. ⁵

The objection to this form of what is in effect double taxation is accentuated where (as in several States) the corporation pays the tax, collecting the amount from the stockholders; and where the tax upon the shares is of that sort, it would be double taxation also to tax the corporate property. In this case the tax is in theory laid upon the capital of the corporation and not upon the stockholders; and to tax the property in *specie*

³ White, J., in *Owensboro Nat. Bank v. Owensboro*, 173 U. S. 664, 43 L. ed. 850.

⁴ Waite, C. J., in *Tennessee v. Whitworth*, 117 U. S. 129, 136, 29 L. ed. 830.

⁵ *Ryan v. Comrs.*, 30 Kan. 185, 2 Pac. 156.

and also in the form of capital stock would result in double taxation.⁶ Bartol, J., said:

"It is unquestionably true that the property of a corporation does not belong to the shareholders; they are not the legal owners, but they have an equitable or beneficial interest therein. It is held and managed for their use and benefit, and under their control and direction. It is not a mere metaphysical subtlety to say that the corporate property is represented by the shares of stock. It is substantially true, for a tax assessed on the property of the corporation is in reality imposed upon the shareholders, and is paid by them indirectly."⁷ And the Supreme Court of the United States said in such a case:

"While nominally the taxes authorized are not to be assessed upon the capital stock of the corporation in the aggregate and as its property, yet in substance that is its effect. The taxes are assessed upon the actual shares as registered in the names of individual shareholders, but are to be paid by the corporation, so that while the form and mode of taxation is changed, its substance remains as though assessed against the corporation by name. . . . A tax such as that sought to be imposed upon the company by the appellees is a tax upon the corporation within the meaning or the prohibition of its charter, because it is compelled to become surety for taxes nominally imposed upon its stockholders, and is made liable primarily for their payment; a payment which, in the first instance, must be made out of the corporate property, without other recourse than an action against individual stockholders to recover the amounts advanced on their account."⁸

§ 732. Double taxation of this sort often forbidden.

This unjust form of taxation, placing as it does a double burden of taxation upon corporate property, is often forbidden

⁶ County Comrs. v. Farmers' & M. Nat. Bank, 48 Md. 117.

⁷ County Comrs. v. Farmers' & M. Nat. Bank, *supra*.

⁸ Matthews, J., in New Orleans v. Houston, 119 U. S. 265, 279, 30 L. ed. 411.

by express statute or by judicial decision. The impropriety of it is strikingly expressed in the California statute. "Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also all the corporate property, would be double taxation. Therefore all property belonging to corporations save and except the property of national banking associations not assessable by Federal statute, shall be assessed and taxed. But no assessment shall be made of shares of stock in any corporation, save and except in national banking associations, whose property, other than real estate, is exempt from assessment by Federal statute."⁹ And in several States it is not permitted to tax both the capital stock and the shares.¹⁰ In many States it is expressly provided by statute that "the owner or holder of stock in an incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock."¹¹ This, of course, applies only to the stock of such corporations as are assessed upon their property within the State. And such a discrimination in taxation between stockholders in corporations which have and in those which have not been taxed on their property is a reasonable discrimination, and not unconstitutional.¹²

⁹ Cal. 1899, ch. 80, amending Pol. Code, § 3608. The same provision is found in Ariz. Rev. Stat. § 3837.

¹⁰ *Burke v. Badlam*, 57 Cal. 594; *State v. Hannibal & S. J. R. R.*, 37 Mo. 265; *St. Louis M. L. Ins. Co. v. Charles*, 47 Mo. 462; *Cheshire County Tel. Co. v. State*, 63 N. H. 167; *Com. v. Fall Brook Co.*, 156 Pa. 488, 26 Atl. 107; *Gillespie v. Gaston*, 67 Tex. 599.

¹¹ N. Y. 1896, ch. 908, § 4, cl. 16. See to the same effect, Conn. Stat. § 3834, 1901, ch. 165, § 8; Fla. 1895, ch. 4322, § 1; Hawaii Laws, § 830; *Ida. Rev. Stat.* § 1401; *Ill. Rev. Stat.* ch. 120, § 3; *Ia. Code of 1897*, § 1319; *Ky. 1902*, ch. 128, Art. III, § 12; *N. H. Stat. c. 55*, § 7; *Nev. Comp. L.* §§ 1082, 1084; *Oh. 1902*, p. 539; *Ore. Misc. L.* § 2750; *R. I. Gen. L.* ch. 45, § 10; *S. Car. Civ. Code of 1902*, § 266, cl. 19; *Va. Const.* § 170; *Wash. Code*, § 1676; *W. Va. Code*, ch. 29, § 51; *Wis. Rev. Stat.* § 1038, cl. 9; *Wyo. Rev. Stat.* § 1774; *Ont. Rev. Stat.* ch. 224, § 7.

¹² *Kidd v. Alabama*, 188 U. S. 730, 47 L. ed. 669.

§ 733. Exemptions whether applicable.

For the reason that the tax on the shares of stock is not a tax upon the property of the corporation, an exemption of the corporation from taxation,¹³ or an exemption of property held by the corporation from taxation,¹⁴ will not extend to taxation of the shares of stock;¹⁵ and conversely an exemption of the shares from taxation will not exempt the property of the corporation.¹⁶

§ 734. Stock taxable at owner's domicile.

Shares of stock not exempted from taxation are legally taxable at the domicile of the owner as part of his wealth, whether the corporation is domestic¹⁷ or foreign,¹⁸ and whether or not the certificates are actually within the jurisdiction.¹⁹ Nor does it affect the right to tax the stock that it may have been taxed already in the State of charter.²⁰

§ 735. Taxation of stock in foreign corporation.

Stock in a foreign corporation is taxable if there are no special provisions otherwise in the statutes.²¹ The exemption

¹³ *State v. Bank of Commerce*, 95 Tenn. 221, 31 S. W. 993.

¹⁴ *Home Assur. Co. v. Assessors*, 42 La. Ann. 1131, 8 So. 481; *Belo v. Comrs.*, 82 N. C. 415, 33 A. R. 688; *State v. Hernando Ins. Co.*, 97 Tenn. 85, 36 S. W. 721; *Jennings v. Com.*, 98 Va. 80, 34 S. E. 981; and see the cases of national banks.

¹⁵ *Contra*, however, in Maryland; *State v. Wilson*, 52 Md. 638; and an exemption from taxation of shares of capital stock of a railroad exempts all its property; *Baltimore v. Baltimore & O. R. R.*, 6 Gill (Md.), 288, 48 A. D. 531. To the same effect, *Whitney v. Madison*, 23 Ind. 331.

¹⁶ *Shelby County v. U. P. Bank*, 161 U. S. 149, 40 L. ed. 650.

¹⁷ *Henkle v. Keota*, 68 Ia. 334, 27 N. W. 250.

¹⁸ *San Francisco v. Flood*, 64 Cal. 504; *Greenleaf v. Board of Review*, 184 Ill. 226, 56 N. E. 295, 75 A. S. R. 168; *Bacon v. Comrs.*, 126 Mich. 22, 85 N. W. 307, 60 L. R. A. 321. *Contra*, *Varner v. Calhoun*, 48 Ala. 178.

¹⁹ *Stanford v. San Francisco*, 131 Cal. 34, 63 Pac. 145.

²⁰ *Dwight v. Boston*, 12 All. (Mass.) 316, 90 A. D. 149; *Dyer v. Osborne*, 11 R. I. 321, 23 A. R. 460.

²¹ *Ogden v. St. Joseph*, 90 Mo. 522, 3 S. W. 25; Md. Gen. L. Art. 81, § 2; S. Dak. Code, §§ 2134, 2142.

of stock in a corporation taxed on its property within the State usually applies to stock in foreign corporations so taxed. In a few States there are special provisions. Thus in New Hampshire "stock in corporations located out of the State, owned by persons living in the State, except where either the stock or the property represented by it is taxed in the towns or States where the corporations are located" is taxable;²² and in Vermont "shares of stock in a corporation situated in another State, when all the stock of such corporation is taxed in such State to the holders, whether residing within or without such State, or when the corporation is taxed in such State for all its stock" are exempt.²³ So in New Jersey while under an earlier form of statute shares of stock in foreign corporations were taxable,²⁴ under the present statute they are exempt.²⁵ And in Connecticut the statute is similarly interpreted. "We think the Legislature intended to have shares of stock in foreign corporations held by owners resident here, taxed only in the exceptional cases where they are not in fact taxed elsewhere . . . and the fair presumption in any given case is that such shares are in fact taxed elsewhere."²⁶ In Delaware the Constitution provides that "shares of the capital stock of corporations created under the laws of this State, when owned by persons or corporations without this State, shall not be subject to taxation by any law now existing or hereafter to be made."²⁷

In Ohio the following rather elaborate provision is in force: "No person shall be required to list for taxation any share or shares of the capital stock of any corporation, whether domestic or foreign, the property of which is taxed in the name

²² N. H. Pub. Stat. ch. 55, § 7, as amended.

²³ Vt. Stat. § 362, ch. 3.

²⁴ *State v. Danser*, 23 N. J. L. 552; *Newark City Bank v. Assessor*, 30 N. J. L. 13.

²⁵ *Smith v. Ramsey*, 54 N. J. L. 546, 24 Atl. 445; *De Baun v. Smith*, 55 N. J. L. 110, 25 Atl. 277.

²⁶ *Torrance, J.*, in *Lockwood v. Weston*, 61 Conn. 211, 218, 23 Atl. 9.

²⁷ Del. Const. Art. 9, § 6.

of such company in Ohio, nor shall any person be required to list for taxation any share or shares of the capital stock of any corporation, whether domestic or foreign, if satisfactory proof, when demanded, is furnished to the taxation authorities by the holder of such share or shares that two-thirds or more of the property of such corporation is taxed in Ohio and the remainder is taxed in some State or States of the United States; provided, however, that this shall not apply to shares in any foreign corporation unless it shall, whether otherwise required by law to do so or not, pay annually for the privilege of exercising its franchise in Ohio, upon its entire authorized capital stock, the same percentage as is required by law on the subscribed or issued capital stock of domestic corporations."²⁸

This provision does not exempt from taxation the shares of a foreign corporation unless all the corporate property is taxed in Ohio. There is no apportionment under the act.²⁹

§ 736. Stock taxable at domicile of corporation.

Many States tax the shareholders upon their shares at the place where the corporation is situated. This is the commonest method of taxing the shares of national banks and other banking companies; and it is a common method of taxing shareholders in other corporations, especially foreign shareholders. This method of taxation has been held illegal in a few cases, on the ground that there is no property of the shareholders there to tax.³⁰ But in other cases it has been held that the shareholders are there taxable because they own property there. Thus in the Supreme Court of the United States, Waite, C. J., said: ³¹ "A share of bank stock may be

²⁸ Oh. 1902, p. 539.

²⁹ *Lee v. Sturges*, 46 Oh. St. 153.

³⁰ *San Francisco v. Mackey*, 22 Fed. 602; *Railroad v. Commrs.*, 91 N. C. 454; *Union Bank v. State*, 9 Yerg. (Tenn.) 490.

³¹ *Tappan v. Merchants' Nat. Bank*, 19 Wall. 490, 503, 22 L. ed. 189. In *Jermain v. R. R.*, 91 N. Y. 483, 492, Earl, J., expressed the same idea: "A share of stock represents the interest which the shareholder has in the capital and set earnings of the corporation."

in itself intangible, but it represents that which is tangible. It represents money or property invested in the capital stock of the bank. That capital is employed in business by the bank, and the business is very likely carried on at a place other than the residence of some of the shareholders. The shareholder is protected in his person by the government at the place where he resides; but his property in this stock is protected at the place where the bank transacts his business. If he were a partner in a private bank doing business at the same place, he might be taxed there on account of his interest in the partnership. It is not easy to see why, upon the same principle, he may not be taxed there on account of his stock in an incorporated bank. His business is there as much in the one case as in the other. He requires for it the protection of the government there, and it seems reasonable that he should be compelled to contribute there to the expenses of maintaining the government." So in Vermont, Taft, J., said:³² "The owner of stock is not merely the owner of a right to dividends, but he is the owner of a proportionate share of the property of the corporation." The same doctrine has been held in New York of the Transfer Tax, which applies to "stock within the State."³³ Gray, J., thus explained the difference between bonds and stock:³⁴

"The attitude of a holder of shares of capital stock is quite other than that of a holder of bonds towards the corporation which issued them. While the bondholders are simply creditors, whose concern with the corporation is limited to the fulfilment of its particular obligation, the shareholders are persons who are interested in the operation of the corporate property and franchises, and their shares actually represent undivided interests in the corporate enterprise. . . . That right as a chose in action must necessarily follow the share-

³² *St. Albans v. Car Co.*, 57 Vt. 68.

³³ *Matter of Bronson*, 150 N. Y. 1, 44 N. E. 707, 55 A. S. R. 632, 34 L. R. A. 238; *In re Cushing's Estate*, 40 Misc. 505, 82 N. Y. Supp. 795.

³⁴ *Matter of Bronson*, *supra*.

holder's person; but that does not exclude the idea that the property as to which the right relates, and which is, in effect, a distinct interest in the corporate property, is not within the jurisdiction of the state for the purpose of assessment upon its transfer through the operation of any law, or of the act of its owner."

But a better ground on which to support such a tax is that expressed by Baldwin, J., in the Supreme Court of Connecticut:³⁵

"There is nothing in the objection urged in the demurrer to the complaint that the law in question 'attempts to impose a tax upon personal property outside the jurisdiction and beyond the territory of the state.' Each non-resident shareholder participates in the enjoyment of a franchise granted by this state, and has an equitable interest in property which is protected by this state, and whose legal owner (the defendant) is one of its own citizens. The sovereign power which gave his shares a being could also give them a *situs* within its territory for purposes of taxation."³⁶

"To do this it is not necessary to declare in terms that they shall be deemed to be situated where the corporation belongs. It is enough to lay a tax upon them there, and impose a lien upon them there."³⁷

It would seem that this last ground is the only one upon which this tax can properly be based. The stockholder is taxable, not because he has property within the jurisdiction, but because he obtains from the State of charter the privilege of becoming a stockholder, and may be taxed upon that privilege. Therefore no foreign State, though the corporation does business there, can tax a foreign stockholder.³⁸ And a tax upon property situated within the State, like the New York transfer

³⁵ State v. Travellers' Ins. Co., 70 Conn. 590, 40 Atl. 465.

³⁶ Citing Tappan v. Bank, 19 Wall. 490, 22 L. ed. 189; Lockwood v. Town of Weston, 61 Conn. 211, 218, 23 Atl. 9.

³⁷ And see St. Albans v. Car Co., 57 Vt. 68; American Coal Co. v. Comrs., 59 Md. 185; Spiller v. Turner, [1897] 1 Ch. 911.

³⁸ Spiller v. Turner, [1897] 1 Ch. 911.

tax, should not be imposed upon a foreign stockholder in a domestic corporation.

§ 737. Transfer of stock to avoid taxation.

Several States have provided penalties for fraudulently transferring stock to avoid taxation.³⁹

§ 738. Transfer or inheritance tax or probate duty.

A transfer tax or probate duty is imposed upon the privilege of passing title to the thing. Such a tax may therefore be imposed, in the case of a share of stock, by any country the law of which is invoked to pass the title. Provisions bearing on this kind of taxation are found in several States. "If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state comptroller on the transfer thereof. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the state comptroller at least ten days prior to the said transfer; nor shall any such safe deposit company, bank or other institution, person or persons deliver or transfer any securities or assets of the estate of a non-resident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of this article, unless the state comptroller consents thereto in writing. And it shall be lawful for the said county treasurer or state comptroller, personally, or by representative, to examine said securities or assets at the time of such delivery or transfer. Failure

³⁹ See, for instance, Conn. Stat. § 3839; Fla. Rev. Stat. § 2135; Mich. Stat. § 4882.

to serve such notice or to allow such examination, or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank or other institution, person or persons liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this article." ⁴⁰

It would seem that the law of the State of charter must be invoked to alter the right of the former shareholder, and therefore that the State of charter may rightfully tax the transfer. And this is the view usually held,⁴¹ though this is sometimes put on the untenable ground that it is a tax on property situated within the jurisdiction.⁴² The country in which the certificate of stock is situated at the time of the transfer may tax the transfer as that of property within the jurisdiction.⁴³ But a foreign State in which the shares are not physically situated cannot tax the transfer merely because the corporation is registered to do business there.⁴⁴

⁴⁰ N. Y. 1901, ch. 173, § 228. To the same effect, Mo. Rev. Stat. of 1899, § 311; Wis. 1903, ch. 44, § 11; Wyo. 1903, ch. 80, § 9.

⁴¹ *Attorney General v. New York Breweries Co.*, [1898] 1 Q. B. 205; *Matter of Bronson*, 150 N. Y. 1, 55 A. S. R. 632, 34 L. R. A. 238, 44 N. E. 707; *In re Cushing's Estate*, 40 N. Y. Misc. 505, 82 N. Y. S. 795. But see *contra*, *Citizens' Nat. Bank v. Sharp*, 53 Md. 521.

⁴² *Matter of Bronson*, 150 N. Y. 1, 6, 44 N. E. 707, 55 A. S. R. 632, 34 L. R. A. 238.

⁴³ *Stern v. Queen*, [1896] 1 Q. B. 211. So of a bond; *In re Morgan*, 150 N. Y. 35, 44 N. E. 1126.

⁴⁴ *Treasurer General v. New Jagersfontein M. & E. Co.*, 10 Cape L. J. 255 (Orange Free State). Compare *In re Cushing's Estate*, 40 N. Y. Misc. 505, 82 N. Y. S. 795.

CHAPTER XXX.

TAXATION AND INTERSTATE COMMERCE.

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| <p>§ 741. Regulation of interstate commerce by taxation unconstitutional.</p> <p>742. Tangible property.</p> <p>743. Property in transit or lately brought in.</p> <p>744. Distinction between regulation and taxation of such property.</p> <p>745. Intrastate carriage connected with interstate commerce.</p> <p>746. Property awaiting export.</p> <p>747. Discriminating tax on foreign products.</p> <p>748. Vehicles of interstate commerce.</p> <p>749. Proportionate tax on vehicles as property.</p> <p>750. Tax on the business of interstate commerce.</p> <p>751. License fee for interstate business.</p> | <p>§ 752. License fee solely for intrastate business.</p> <p>753. Amount of such fee unimportant.</p> <p>754. Exception in case of public-service companies.</p> <p>755. Taxation of franchise as property.</p> <p>756. Taxation of franchise of domestic corporation.</p> <p>757. Taxation of receipts from interstate commerce.</p> <p>758. Whether valid as franchise tax.</p> <p>759. Proportionate tax on entire property of corporation.</p> <p>760. Taxation of proportion of intangible property.</p> <p>761. Tax on special franchise granted by State.</p> <p>762. Tax as return for special police supervision.</p> <p>763. General conclusion.</p> |
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§ 741. Regulation of interstate commerce by taxation unconstitutional.

The power to regulate interstate commerce being lodged in Congress, a State legislature can lay no tax on a foreign corporation engaged in interstate commerce if the tax amounts to a regulation of such commerce. It is necessary therefore to re-examine the questions already considered with a view to the constitutional limitations.

It is clear that any tax levied upon a foreign corporation engaged in interstate commerce impedes its efficiency, and to

that extent interferes with commerce. This may of course render the tax unconstitutional, but it does not necessarily do so. In the words of Field, J., in *The Delaware Railroad Tax*:

“The tax imposed by the act in question affects commerce among the states and impedes the transit of persons and property from one state to another just in the same way and in no other that taxation of any kind necessarily increases the expenses attendant upon the use or possession of the thing taxed. That taxation produces this result of itself constitutes no objection to its constitutionality.”

§ 742. Tangible property.

The land and chattels of a corporation engaged in interstate commerce may always be taxed without infringing the constitutional provision.¹ And this is true even if the property is used to facilitate interstate commerce, like the rolling stock of a railroad,² or cabs maintained by the railroad for the use of interstate passengers.³

On this principle a State tax on the stock employed within the State of a foreign corporation whose business consists partly of domestic commerce and partly of foreign commerce is not a regulation of commerce.⁴

§ 743. Property in transit or lately brought in.

It has been seen that property in actual transit through a State cannot be taxed; but where the property is used for in-

¹ *Morgan v. Parham*, 16 Wall. 471, 21 L. ed. 303; *Transp. Co. v. Wheeling*, 99 U. S. 273, 25 L. ed. 412; *Ferry Co. v. East St. Louis*, 107 U. S. 365, 27 L. ed. 419; *Atlantic & P. Tel. Co. v. Philadelphia*, 190 U. S. 160, 47 L. ed. 995, and cases cited.

² *Marye v. B. & O. Ry.*, 127 U. S. 117, 32 L. ed. 94; *A. & P. Ry. v. Lesueur*, 2 Ari. 428, 19 Pac. Rep. 157; *Carlisle v. P. P. C. Co.*, 8 Col. 320.

³ *People v. Knight*, 171 N. Y. 354, 64 N. E. 152.

⁴ *New York v. Roberts*, 171 U. S. 658, 43 L. ed. 323; *People v. Roberts*, 158 N. Y. 168, 52 N. E. 1104; *People v. Roberts*, 36 App. Div. 597, 55 N. Y. Supp. 950.

terstate or foreign commerce a tax levied on it immediately before or after actual transit is unconstitutional. Thus property just imported into a State, from a foreign country, and still in the original package in which it was imported, cannot be taxed, as such a tax would be a tax on imports as well as an interference with foreign commerce.⁵ "Goods imported do not lose their character as imports and become incorporated into the mass of property of the State, until they have passed from the control of the importer or been broken up by him from their original cases. Whilst retaining their character as imports, a tax upon them, in any shape, is within the constitutional prohibition."⁶

Where the property in question has been brought from another State of the Union a tax laid upon it is not obnoxious to the Constitution as a tax upon imports, since that refers to imports from foreign countries only.⁷ If objectionable, it must be merely as a regulation of interstate commerce. Whether it is so depends upon whether it is taxed as imported property, or while it is in transit, or as part of the mass of property within the State after it has become incorporated into the bulk of the property of the country.

The question arose in the case of *Brown v. Houston*.⁸ That was a suit to enjoin the collection of a local tax on coal brought in barges from Pennsylvania and at the time of taxation lying in the Mississippi river. The owners alleged that the coal was mined in Pennsylvania, and was from that State imported into the State of Louisiana, as their property, and was then and had always remained in its original condition, and never had become mixed or incorporated with other property in that State. That when the assessment was made

⁵ *Brown v. Maryland*, 12 Wheat. 436, 6 L. ed. 684; *Waring v. Mayor*, 8 Wall. 110, 19 L. ed. 342; *Low v. Austin*, 13 Wall. 29, 20 L. ed. 517; *May v. New Orleans*, 178 U. S. 496, 44 L. ed. 1165; *Appeal of Pitkin*, 193 Ill. 268, 61 N. E. 1048; *People v. Barker*, 155 N. Y. 330, 49 N. E. 940.

⁶ *Field, J.*, in *Low v. Austin*, 13 Wall. 29, 34, 20 L. ed. 517.

⁷ *Woodruff v. Parham*, 8 Wall. 123, 19 L. ed. 382.

⁸ 114 U. S. 622, 29 L. ed. 257.

the coal was afloat on the Mississippi river, in the parish of Orleans, in the original condition in which it was exported from Pennsylvania, and that the agents notified the board of assessors of the parish that the coal did not belong to them, but to the plaintiffs, and was held as stated, and was not subject to taxation; and they protested against the assessment for that purpose.

The court, however, held that the tax was valid. Mr. Justice Bradley said: "It was not a tax imposed upon the coal as a foreign product, or as the product of another State than Louisiana, nor a tax imposed by reason of the coal being imported or brought into Louisiana, nor a tax imposed whilst it was in a state of transit through that State to some other place of destination. It was imposed after the coal had arrived at its destination and was put up for sale. The coal had come to its place of rest, for final disposal or use, and was a commodity in the market of New Orleans. It might continue in that condition for a year or two years, or only for a day. It had become a part of the general mass of property in the State, and as such it was taxable for the current year as all other property in the city of New Orleans was taxable. Under the law, it could not be taxed again until the following year. It was subjected to no discrimination in favor of goods which were the product of Louisiana. It was treated in exactly the same manner as such goods were treated.

"It cannot be seriously contended, at least in the absence of any congressional legislation to the contrary, that all goods which are the product of other States are to be free from taxation in the State to which they might be carried for use or sale."

This decision was later approved and followed by the same court,⁹ and the rule was laid down by Mr. Justice Field as follows: "The correct rule is for the assessor or tax collector to assess all property found within his jurisdiction, being there

⁹ *Pittsburg & S. Coal Co. v. Bates*, 156 U. S. 577, 39 L. ed. 538.

for the purpose of remaining till used or sold, and constituting part of the great mass of the general property of the country, provided always that the assessment does not discriminate between the products of different States."

§ 744. Distinction between regulation and taxation of such property.

The question was again raised in a recent case, and it was strenuously argued that the authority of the earlier decisions had been shaken by the later decisions in *Leisy v. Hardin*,¹⁰ and *Lyng v. Michigan*.¹¹ But the court reaffirmed the doctrine of *Brown v. Houston*, the distinction between the cases being thus put by Mr. Justice White: "In *Brown v. Maryland* there was an absolute want of power to tax imports, and it was held that a state enactment which operated to tax imports, whether directly or indirectly, was within the positive prohibition. In other words, that imports could not be taxed at all until they had completely lost their character as such. *Woodruff v. Parham* and *Brown v. Houston*, on the other hand, so far as interstate commerce was concerned, dealt with no positive and absolute inhibition against the exercise of the taxing power, but determined whether a particular exertion of that power by a State so operated upon interstate commerce as to amount to a regulation thereof, in conflict with the paramount authority conferred upon Congress. In order to fix the period when interstate commerce terminated, the criterion announced in *Brown v. Maryland*—that is, sale in the original packages at the point of destination—was applied. The court, therefore, conceded that the goods which were taxed had not completely lost their character as interstate commerce, since they had not been sold in the original packages. As, however, they had arrived at their destination, were at rest in the state, were enjoying the protection which the laws of the state afforded, and were taxed without discrimination, like all other

¹⁰ 135 U. S. 100, 34 L. ed. 128.

¹¹ 135 U. S. 161, 34 L. ed. 150.

property, it was held that the tax did not amount to a regulation in the sense of the Constitution, although its levy might remotely and indirectly affect interstate commerce. In *Leisy v. Hardin* and *Lyng v. Michigan* the same question in a different aspect was presented. The goods had reached their destination and the question was not the power of the state to tax them, but its authority to treat the goods as not the subjects of interstate commerce, and to prohibit their introduction or sale. This was held to be a regulation within the constitutional sense, and therefore void. The cases, therefore, did not decide that interstate commerce was to be considered as having completely terminated at one time for the purposes of import taxation, and at a different period for the purposes of interstate commerce. But both cases, whilst conceding that interstate commerce was completely terminated only after the sale at the point of destination in the original packages, were rested upon the nature and operation of the particular exertion of State authority considered in the respective cases."¹²

§ 745. Interstate carriage connected with interstate commerce.

A similar question arose upon the imposition by a State of a tax upon the business done wholly within the State, of carrying to points within the State in cabs passengers who had already been brought into the State by the same corporation. It was urged that the conveyance in the cab was part of an interstate journey, and to lay an excise tax upon it was to tax interstate commerce. The court however held that though connected with interstate commerce the cab service was not itself such commerce, and might be taxed.¹³ Mr. Justice Brewer said: "Many things have more or less close relation to interstate commerce which are not properly to be regarded as a part of it. If the cab which carries the passengers from the hotel to the ferry landing is engaged in inter-

¹² *American S. & W. Co. v. Speed*, 192 U. S. 500.

¹³ *Pennsylvania R. R. v. Knight*, 192 U. S. 21.

state transportation, why is not the porter who carries the traveler's trunk from his room to the carriage also so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply hay and grain for the horses also engaged in interstate commerce? And where will the limit be placed? We are of opinion that the cab service is an independent local service, preliminary or subsequent to any interstate transportation."

§ 746. Property awaiting export.

The question is much the same in the converse case where chattels are held within a State awaiting export. Goods lying ready for immediate shipment into another State are not taxable,¹⁴ but it is otherwise if they are awaiting shipment not immediately, but at some time in the future.¹⁵ Whether the time for immediate shipment has come is not always easy to determine. The best guide for the determination of the question is in the language of Bradley, J., in *Coe v. Errol*:¹⁶ "When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepôt for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation nor is exportation begun until they are committed to the common carrier for transportation out the state to the state of their destination, or have started on their ultimate passage to that state. Until then it is reasonable to regard them as not only within the state of their origin, but as a part of the general mass of property of that state, subject to its jurisdiction, and liable to taxation there if not taxed by reason of their being intended for exportation, but taxed without any discrimination in the usual way and manner in which such property is taxed in the state."

¹⁴ *Ogilvie v. Crawford Co.*, 7 Fed. 745; *Blount v. Munroe*, 60 Ga. 61; *State v. Carrigan*, 39 N. J. L. 35.

¹⁵ *Diamond Match Co. v. Ontonagon*, 188 U. S. 82, 47 L. ed. 394.

¹⁶ 116 U. S. 517, 525, 29 L. ed. 715.

§ 747. Discriminating tax on foreign products.

A discriminating tax operating to the disadvantage of the products of other States when introduced for sale into the taxing State is evidently unconstitutional as a regulation of interstate commerce.¹⁷

§ 748. Vehicles of interstate commerce.

The constitutionality of taxation of vehicles of interstate commerce is not always easy to determine. There are two objections to such taxation: first, that such a tax interferes with interstate commerce; second, that ordinarily such vehicles go from State to State, and have no permanent *situs* in either State. To be legal, the taxation must be laid upon these vehicles merely as property, and it must be laid upon them in some jurisdiction where they may be said to have a *situs*. Such vehicles may legally be taxed as property in any State where they have a permanent *situs*.

To tax steamboats carrying on an interstate business which merely enter the State for the purpose of such business, like coasting steamers and ferry boats, is unconstitutional as a regulation of interstate commerce, since they merely touch at a port of the taxing State, and they are only within the jurisdiction of the State while engaged in the act of interstate commerce.¹⁸ The real difficulty here would seem to be that the steamboats are within the State only during transit and are therefore not as property within the taxing power;¹⁹ so that if the tax could be imposed, it must be as an excise on the right to enter the State. Such a tax would obviously be unconstitutional as an interference with interstate commerce.

§ 749. Proportionate tax on vehicles as property.

The distinction is brought out by a series of cases involving

¹⁷ Walling v. Michigan, 116 U. S. 446, 25 L. ed. 691, and cases cited.

¹⁸ Hays v. S. S. Co., 17 How. 596, 15 L. ed. 254; St. Louis v. Ferry Co., 11 Wall. 423, 20 L. ed. 192; Morgan v. Parham, 16 Wall. 471, 21 L. ed. 303; Transportation Co. v. Wheeling, 99 U. S. 273, 25 L. ed. 412.

¹⁹ Ante, § 490.

the legality of the taxation of railroad cars, which not only come to a State but enter it and remain within it for a considerable time. Whether such cars, used upon a railroad in more than one State, may constitutionally be taxed has been much argued. It was held in *Pickard v. Car Co.*²⁰ that a tax of fifty dollars on each car so used could not be imposed for the privilege of running the car through the State; but this was a tax on the business of commerce, not on the property. In *Marye v. Railroad*²¹ there was a strong *dictum* to the effect that a State might probably tax such cars by proper legislation. Finally in *Pullman's Palace Car Co. v. Pennsylvania*²² the question was decided. The car company, an Illinois corporation, had been taxed, according to a statute of Pennsylvania, upon such proportion of its capital stock as the miles of road upon which its cars were run in Pennsylvania bore to the whole number of miles of road upon which its cars were run. It was held by a majority of the court that cars run upon roads in Pennsylvania were situated in that State for the purpose of taxation, and that this was a proper way in which to tax the property of the company in such cars.

Mr. Justice Gray said: "The cars were continuously and permanently employed in going to and fro upon certain routes of travel. If they had never passed beyond the limits of Pennsylvania, it could not be doubted that the State could tax them, like other property, within its borders, notwithstanding they were employed in interstate commerce. The fact that, instead of stopping at the State boundary, they cross that boundary in going out and coming back, cannot affect the power of the State to levy a tax upon them. The State, having the right, for the purposes of taxation, to tax any personal property found within its jurisdiction, without regard to

²⁰ 117 U. S. 34, 29 L. ed. 785.

²¹ 127 U. S. 117, 123, 32 L. ed. 94.

²² 141 U. S. 18, 35 L. ed. 619. *Acc.* *American Ref. Transit Co. v. Hall*, 174 U. S. 70, 43 L. ed. 899; *Union Ref. Transit Co. v. Lynch*, 177 U. S. 149, 44 L. ed. 708; *State v. Canada C. C. Co.*, 85 Minn. 457, 89 N. W. 66. *Contra*, *Central R. R. v. State Board of Assessors*, 49 N. J. L. 1, 7 Atl. 306.

the place of the owner's domicile, could tax the specific cars which at a given moment were within its borders. The route over which the cars travel extending beyond the limits of the State, particular cars may not remain within the State; but the company has at all times substantially the same number of cars within the State, and continuously and constantly uses there a portion of its property; and it is distinctly found, as matter of fact, that the company continuously, throughout the periods for which these taxes were levied, carried on business in Pennsylvania, and had about one hundred cars within the State.

"The mode which the State of Pennsylvania adopted, to ascertain the proportion of the company's property upon which it should be taxed in that State, was by taking as a basis of assessment such proportion of the capital stock of the company as the number of miles over which it ran cars within the State bore to the whole number of miles, in that and other States, over which its cars were run. This was a just and equitable method of assessment; and, if it were adopted by all the States through which these cars ran, the company would be assessed upon the whole value of its capital stock, and no more."

There was a vigorous dissent, which rather tends to emphasize the point made above, that the question is merely one of the *situs* of the property within the jurisdiction of the taxing power.

The dissenting justices took the ground that no single car was permanently in Pennsylvania, and the *situs* of the cars was therefore no more in Pennsylvania than the *situs* of a ferry boat or other vessel is in the State at the shore of which it may touch.

In accordance with this case, taxation of corporations engaged in interstate commerce has been upheld in the case of a car company upon a fair proportion of the value of its cars;²³ a telegraph company upon a fair proportion of its capital

²³ Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 35 L. ed. 613

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stock;²⁴ and an express company upon a fair proportion of its capital stock.²⁵

§ 750. Tax on the business of interstate commerce.

A tax laid not on the property of a corporation doing interstate business but upon the doing of that business itself is obviously a regulation of interstate commerce and therefore unconstitutional. Thus a tax proportioned to the number of passengers transported or freight carried is clearly a tax on commerce, and is bad;²⁶ and so is a tax on messages sent or received beyond the limits of the State.²⁷ If the effect of the State statute is to impose such a tax, the exact form of it is immaterial. A New York statute provided that the master of every vessel entering New York should either pay a small fee or enter into a bond for each passenger brought into the State. This was held to be unconstitutional.²⁸

§ 751. License fee for interstate business.

A license fee for the privilege of transacting a merely interstate business seems clearly unconstitutional. It was, to be sure, held in the time of Chief Justice Chase that a license fee laid equally upon all express companies and railroad companies doing business beyond the State was not an unconstitutional regulation of commerce.²⁹ But this case was overruled later; and it is now established that no State can compel a corporation by taxation to pay for the privilege of

²⁴ *Western Union Tel. Co. v. Massachusetts*, 125 U. S. 530, 31 L. ed. 790.

²⁵ *Adams Express Co. v. Ohio*, 165 U. S. 194, 166 U. S. 185, 41 L. ed. 683, 956.

²⁶ *The Passenger Cases*, 7 How. 283, 12 L. ed. 702; *Crandall v. Nevada*, 6 Wall. 35, 18 L. ed. 745; *Case of State Freight Tax*, 15 Wall. 232, 21 L. ed. 146; *Erie Ry. v. New Jersey*, 31 N. J. L. 531.

²⁷ *Telegraph Co. v. Texas*, 105 U. S. 460, 26 L. ed. 1067.

²⁸ *Henderson v. Mayor of New York*, 92 U. S. 259, 23 L. ed. 543. *Miller, J.*, said: "To require a heavy and almost impossible condition to the exercise of this right [of landing passengers], with the alternative of payment of a small sum of money, is, in effect, to demand payment of that sum."

²⁹ *Osborne v. Mobile*, 16 Wall. 479, 21 L. ed. 470. This was followed in State courts, *e. g.* *W. U. Tel. Co. v. Richmond*, 26 Gratt. (Va.) 1.

engaging in interstate commerce.³⁰ Thus it has been decided that a tax of fifty dollars on each car run by a foreign corporation through a State for the privilege of so running them is an unconstitutional regulation of commerce;³¹ that a license tax on the establishment of an agency of a foreign corporation which is engaged in interstate commerce is an unconstitutional tax;³² and that a statute requiring a foreign express company engaged in interstate commerce to pay a license fee and deposit a statement showing that it had a certain amount of capital, as a condition precedent to doing business within the State, was unconstitutional.³³

In a later case the majority of the court said that a State might enforce an excise tax as a condition of allowing a foreign railway company to run its trains into the State.³⁴ The case is to be sustained on another ground; but the *dictum* is unsound.³⁵

§ 752. License fee solely for intrastate business.

A license fee may however be exacted of a corporation engaged in interstate commerce for the privilege of engaging in business entirely within the State. Thus there is no objection to a license tax applied solely to business carried on by railroads exclusively within the borders of a State.³⁶ And it has

³⁰ *Leloup v. Mobile*, 127 U. S. 640, 32 L. ed. 311; *Lyng v. Michigan*, 135 U. S. 161, 34 L. ed. 150; *Atlantic & P. Tel. Co. v. Philadelphia*, 190 U. S. 160, 47 L. ed. 995, and cases cited.

³¹ *Pickard v. Car Co.*, 117 U. S. 34, 29 L. ed. 785. But a tax of seventy-five cents on every telephone instrument in use has been held valid in a State court as to instruments used in intrastate business. *State v. Rocky Mt. Bell Tel. Co.*, 27 Mont. 394, 71 Pac. 311. To like effect *Postal Tel. Cable Co. v. Norfolk*, 99 Va. 102, 43 S. E. 207.

³² *McCall v. Cal.*, 136 U. S. 104, 34 L. ed. 391; *Norfolk & W. R. R. v. Pa.*, 136 U. S. 114, 34 L. ed. 394; *contra*, *People v. Wemple*, 131 N. Y. 64, 29 N. E. 1002.

³³ *Crutcher v. Ky.*, 141 U. S. 47, 35 L. ed. 649; *State v. North. Pac. Exp. Co.*, 27 Mont. 419, 71 Pac. 404.

³⁴ *Maine v. Grand Trunk Ry.*, 142 U. S. 217, 35 L. ed. 994.

³⁵ *Horn Silver Mining Co. v. New York*, 143 U. S. 305, 36 L. ed. 164; *Postal Tel. C. Co. v. Adams*, 155 U. S. 688, 39 L. ed. 311.

³⁶ *Nashville, C. & St. L. Ry. v. Ala. City*, 134 Ala. 414, 32 So. 731.

been held that a tax assessed on a telephone company doing business within the State of seventy-five cents on every instrument in use, was, if the company was doing some intrastate business, valid as to the instruments used in such business.³⁷

It must be clear, however, that the corporation would be allowed to carry on its interstate business without obtaining a license; for if it were coerced into obtaining a license for doing business within the State by a refusal otherwise to permit the interstate business there would certainly be an interference with interstate commerce.³⁸

The distinction is brought out by two decisions of the Supreme Court of the United States. In *Crutcher v. Kentucky*³⁹ the act in question prohibited the agent of a foreign express company from carrying on business at all in that State without first obtaining a license from the State. The company was thus prevented from doing any business, even of an interstate character, without obtaining the license in question. The act was held to be a regulation of interstate commerce in its application to corporations or associations engaged in that business, and that subject was held to belong exclusively to national, and not State, legislation. Mr. Justice Bradley said that "taxes or license fees, in good faith imposed exclusively on express business carried on wholly within the State, would be open to no such objection," viz.: an objection that the tax or license was a regulation of, or that it improperly affected, interstate commerce. In the later case of *Osborne v. Florida*,⁴⁰ the State statute required all express companies doing business in the State to pay a certain arbitrarily fixed sum as a license tax for doing its business. As construed by the Supreme Court of the State, this tax was held payable only by an express company which did a local business within the State, though a company doing such business must pay the

³⁷ *State v. Rocky Mt. Bell Tel. Co.*, 27 Mont. 394, 71 Pac. 311.

³⁸ *Allen v. Pullman's Palace Car Co.*, 191 U. S. 171.

³⁹ 141 U. S. 47, 35 L. ed. 649.

⁴⁰ 164 U. S. 650, 41 L. ed. 586.

tax even if it also carried on an interstate business. The tax was held constitutional.

Mr. Justice Peckham said: "The statute herein differs from the cases where statutes upon this subject have been held void, because in those cases the statutes prohibited the doing of any business in the State whatever, unless upon the payment of the fee or tax. It was said, as to those cases, that as the law made the payment of the fee, or the obtaining of the license, a condition to the right to do any business whatever, whether interstate or purely local, it was on that account a regulation of interstate commerce, and therefore void. Here, however, under the construction as given by the State court, the company suffers no harm from the provisions of the statute. It can conduct its interstate business without paying the slightest heed to the act, because it does not apply to, or in any degree affect, the company in regard to that portion of its business which it has the right to conduct without regulation from the State.

"The company in this case need take out no license, and pay no tax, for doing interstate business, and the statute is therefore valid."

That extremely nice distinctions may arise in this class of cases is illustrated by two other decisions of the same court. In *Ficklen v. Shelby County* ⁴¹ the courts held that interstate commerce was not restricted to an unconstitutional extent by a statute taxing commission merchants upon their gross annual commissions, although in the case at bar all the commissions for the year had been earned upon consignments from other States. But in *Stockard v. Morgan*, ⁴² where a tax was laid on the agent of a foreign merchant, the tax was held unconstitutional.⁴³ The merchants in the former case asked and received permission to carry on a general business; and

⁴¹ 145 U. S. 1, 36 L. ed. 601.

⁴² 185 U. S. 27, 46 L. ed. 785.

⁴³ See to the same effect, *Caldwell v. North Carolina*, 187 U. S. 622, 47 L. ed. 336; *Norfolk & W. Ry. v. Sims*, 191 U. S. 441.

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they were thereby authorized to do any kind of commission business, local as well as interstate. That they happened to do no local business was an accidental circumstance; they had obtained permission to do it. In the latter case the agent intended to do and by the license was empowered to do only an interstate business, the business in which his principal was engaged; and the tax was therefore one on interstate commerce.

§ 753. Amount of such fee unimportant.

In a later case it was claimed that the privilege tax, though nominally levied upon the interstate business, was only colorably so; and it was shown that the amount of the tax was greater than the entire receipts of the intrastate business. But the court held that so long as it was within the power of the corporation to cease to do an intrastate business while still carrying on the interstate business, the tax was constitutional.⁴⁴ Mr. Justice Holmes said: "If the Pullman Company . . . had the right to choose between what points it would carry, and, therefore, to give up the carriage of passengers from one point to another in the State, the case is governed by *Osborne v. Florida*. The company cannot complain of being taxed for the privilege of doing a local business which it is free to renounce." The decision has been followed.⁴⁵

§ 754. Exception in case of public service companies.

There is probably a difference in this respect between an ordinary commercial business and the business of a public service company which is directly engaged in interstate commerce. The ordinary commercial corporation may be taxed for the privilege of doing business even though part of its business consists of the sale of goods brought from another State, provided part of its business is or may be the sale of

⁴⁴ *Pullman's Palace Car Co. v. Adams*, 189 U. S. 420, 47 L. ed. 877.

⁴⁵ *Allen v. Pullman's Palace Car Co.*, 191 U. S. 171.

domestic goods. But it seems that where an express company or a railroad is engaged in interstate commerce, it is difficult if not impossible to impose conditions on its business within the State which will not affect its interstate business.⁴⁶ The Supreme Court of the United States has pointed out "the distinction between corporations organized to carry on interstate commerce, and having a quasi-public character, and corporations organized to conduct strictly private business;"⁴⁷ and this distinction has been emphasized in other cases.⁴⁸

§ 755. Taxation of franchise as property.

But while permission to do the business of interstate commerce may not be taxed, the franchise of the corporation, regarded as property, may be taxed so far as it can be said to enter into the value of the property within the State, even if the corporation is engaged in interstate commerce, provided only it is not a franchise conferred by the United States.⁴⁹ The distinction between a tax upon the franchise and a license fee to do business is certainly a shadowy one;⁵⁰ but once the principle already considered⁵¹ is established, that a foreign corporation may be taxed in a State, as upon its property actually there, upon its business capital, including franchise and good will, it follows that such a tax assessed upon the franchise of a foreign corporation engaged in interstate commerce is valid as a mere tax on property within the jurisdiction.

⁴⁶ See *Louisville & N. R. R. v. Eubank*, 184 U. S. 27, 46 L. ed. 416.

⁴⁷ *Shiras, J.*, in *New York v. Roberts*, 171 U. S. 658, 665, 43 L. ed. 323.

⁴⁸ *People v. Roberts*, 36 App. Div. 597, 55 N. Y. S. 950.

⁴⁹ *Postal Tel. Cable Co. v. Adams*, 155 U. S. 688, 39 L. ed. 311; *Adams Exp. Co. v. Ohio State Auditor*, 165 U. S. 194, 41 L. ed. 683; *Atlantic & Pac. Tel. Co. v. Philadelphia*, 190 U. S. 160, 47 L. ed. 995, and cases cited; *Oakland Sugar Mill Co. v. Fred W. Wolf Co.*, 118 Fed. 239; *A. & P. Ry. v. Lesueur*, 2 Ariz. 428, 19 Pac. 157; *State v. W. U. Tel. Co.*, 165 Mo. 502, 65 S. W. 775; *People v. Roberts*, 158 N. Y. 168, 52 N. E. 1104.

⁵⁰ *Bradley, J.*, in *Leloup v. Mobile*, 127 U. S. 640, 32 L. ed. 311; *Lamar, J.*, in *Railroad Co. v. Pennsylvania*, 136 U. S. 114, 34 L. ed. 394.

⁵¹ *Supra*, § 507.

§ 756. Taxation of franchise of domestic corporations.

How far may the State of charter impose any tax it pleases as a franchise tax upon a corporation engaged in interstate commerce? This question cannot be answered in an altogether satisfactory manner. It seems clear that a tax which is in reality a fair compensation for the franchise may be imposed; and it is almost equally clear that a franchise tax upon an ordinary commercial corporation, though it is engaged in interstate commerce, might be set by the State of charter at any amount.⁵² But where the corporation is organized expressly to conduct interstate commerce as a public service company the matter is not so clear. In *Fargo v. Michigan* ⁵³ Mr. Justice Miller said:

“The proposition that the States can, by way of a tax upon business transacted within their limits, or upon franchises of corporations which they have created, regulate such business, and the affairs of such corporations, has often been set up as a defense to the allegation that the taxation was such an interference with commerce as violated the constitutional provision; but where the business so taxed is commerce itself, and is commerce among the States or with foreign nations, the constitutional provision cannot thereby be denied, nor can the States, by granting franchises to corporations engaged in the business of transportation, which is in itself interstate commerce, acquire the right to regulate that commerce, either by taxation or any other way.”

And in *Philadelphia & Southern Mail Steamship Company v. Pennsylvania* ⁵⁴ Mr. Justice Bradley said to the same effect: “The corporate franchises, the property, the business, the income of corporations created by a State may undoubtedly be taxed by the State; but in imposing such taxes care should be taken not to hamper, directly or by indirection, interstate or foreign commerce, or any other matter exclusively within the

⁵² *Honduras Commercial Co. v. Assessors*, 54 N. J. Law, 278, 23 Atl. 668.

⁵³ 121 U. S. 230, 30 L. ed. 888.

⁵⁴ 122 U. S. 326, 30 L. ed. 1200.

jurisdiction of the Federal government." But in *Maine v. Grand Trunk Railroad* ⁵⁵ the court went very far in the other direction.

§ 757. Taxation of receipts from interstate commerce.

How far a tax upon the receipts of a corporation from interstate business may be taxed has not been altogether clear on the authorities. In 1873 the Supreme Court in the case of the *State Tax on Railway Gross Receipts* held that such a tax was valid.⁵⁶ But in a later case the authority of this case was shaken.⁵⁷ The case was distinguished from the *State Tax on Railway Gross Receipts* on two grounds: first, that in the earlier case the corporation taxed was a domestic corporation, but in the case at bar a foreign corporation; second, that in the case at bar the receipts taxed had never come into Michigan and there been mingled with the other property of the company. The tax was held invalid. This decision was followed, and the case of the *State Tax on Railway Gross Receipts* expressly disapproved, in *Philadelphia Steamship Company v. Pennsylvania*,⁵⁸ where the State which chartered the corporation for interstate carriage attempted to tax the gross receipts, and the tax was held invalid. This case in turn was followed in *Ratterman v. Western Union Telegraph Company*,⁵⁹ in which it was attempted to tax the gross receipts of an interstate telegraph company; and it has been approved in several later cases.⁶⁰ It may now be stated as clear that no

⁵⁵ 142 U. S. 217, 35 L. ed. 994; *acc.* *People v. Campbell*, 74 Hun, 210, 26 N. Y. S. 832.

⁵⁶ *State Tax on Railway Gross Receipts*, 15 Wall. 284, 21 L. ed. 164; followed in *W. U. Tel. Co. v. Mayer*, 28 Oh. St. 521; *W. U. Tel. Co. v. Com.*, 110 Pa. 405.

⁵⁷ *Fargo v. Michigan*, 121 U. S. 230, 30 L. ed. 888.

⁵⁸ 122 U. S. 326, 30 L. ed. 1200.

⁵⁹ 127 U. S. 411, 32 L. ed. 229; *acc.* *Ind. v. P. P. Car Co.*, 11 Biss. 561, 16 Fed. 193.

⁶⁰ See *Norfolk & W. R. R. v. Pa.*, 136 U. S. 114, 34 L. ed. 394; *Crutcher v. Ky.*, 141 U. S. 47, 35 L. ed. 649. Where a tax is laid upon such part of the receipts of an interstate carrier as are derived solely from business

tax can be laid upon receipts from the transportation of persons or property from one State to another.⁶¹

§ 758. Whether valid as franchise tax.

But in *Maine v. Grand Trunk Ry*⁶² the majority of the court reached a conclusion which seems to be opposed to the earlier cases. A statute of Maine required that every corporation, person, or association operating a railroad in the State should pay an annual excise tax for the privilege of exercising its franchises in the State. The amount of the tax was to be ascertained as follows: the gross receipts were to be divided by the number of miles of road operated, and the resulting average, multiplied by the number of miles operated within the State, was to be the basis of taxation. This statute was held not to be opposed to the Constitution of the United States. Field, J., who delivered the opinion of the court, held that the tax was expressly declared to be, and was, an excise tax for the privilege of exercising its franchises within the State of Maine; that it might be enacted, since the State had the right to exclude the corporation if a foreign one or refuse it the franchise if a domestic one; and that it was not a regulation of commerce, because it was not a direct tax on the receipts. He said:

“The privilege of exercising the franchises of a corporation within a State is generally one of value, and often of great value, and the subject of earnest contention. It is natural, therefore, that the corporation should be made to bear some proportion of the burdens of government. As the granting of the privilege rests entirely in the discretion of the State, whether the corporation be of domestic or foreign origin, it may be conferred upon such creditors, pecuniary or otherwise, as the State in its judgment may deem most conducive to its interests or policy. It may require the payment into its treas-

within the State, it is of course valid. *Pacific Exp. Co. v. Seibert*, 142 U. S. 339, 35 L. ed. 1035.

⁶¹ *People v. Miller*, 178 N. Y. 194, 70 N. E. 472.

⁶² 142 U. S. 217, 35 L. ed. 994.

ury, each year, of a specific sum, or may apportion the amount exacted according to the value of the business permitted, as disclosed by its gains or receipts of the present or past years. . . . A resort to those receipts was simply to ascertain the value of the business done by the corporation, and thus obtain a guide to a reasonable conclusion as to the amount of the excise tax which should be levied; and we are unable to perceive in that resort any interference with transportation, domestic or foreign, over the road of the railroad company or any regulation of commerce which consists in such transportation. If the amount ascertained were specifically imposed as a tax, no objection to its validity would be pretended. And if the inquiry of the State as to the value of the privilege were limited to receipts of certain past years, instead of the year in which the tax is collected, it is conceded that the validity of the tax would not be affected; and if not, we do not see how a reference to the results of any other year could affect its character. There is no levy by the statute on the receipts themselves, either in form or fact. They constitute, as said above, simply the means of ascertaining the value of the privilege conferred. . . . The case of *Steamship Co. v. Pennsylvania* in no way conflicts with this decision. That was the case of a tax, in terms, upon the gross receipts of a steamship company incorporated under the laws of the State, derived from the transportation of persons and property between different States and to and from foreign countries. Such tax was held, without any dissent, to be a regulation of interstate and foreign commerce, and therefore invalid. We do not question the correctness of that decision, nor do the views we hold in this case in any way qualify or impair it."

Justices Bradley, Harlan, Lamar and Brown dissented. Bradley, J., delivering their opinion, said: "The tax, it is true, is called a 'tax on a franchise.' It is so-called, but what is it in fact? It is a tax on the receipts of the company derived from international transportation. This court and some

of the State courts have gone a great length in sustaining various forms of taxes upon corporations. The train of reasoning upon which it is founded may be questionable. A corporation, according to this class of decisions may be taxed several times over. It may be taxed for its charter, for its franchises, for the privilege of carrying on its business; it may be taxed on its capital, and it may be taxed on its property. Each of these taxations may be carried to the full amount of the property of the company. I do not know that jealousy of corporate institutions could be carried much further. This court held that the taxation of the capital stock of the Western Union Telegraph Company in Massachusetts, graduated according to the mileage of lines in that State compared with the lines in all the States, was nothing but a taxation upon the property of the company; yet it was in terms a tax upon its capital stock, and might as well have been a tax upon its gross receipts. By the present decision it is held that taxation may be imposed upon the gross receipts of the company for the exercise of its franchise within the State, if graduated according to the number of miles that the road runs in the State. Then it comes to this: A State may tax a railroad company upon its gross receipts in proportion to the number of miles run within the State as a tax on its property, and may also lay a tax upon these same gross receipts in proportion to the same number of miles for the privilege of exercising its franchise in the State! I do not know what else it may not tax the gross receipts for. If the interstate commerce of the country is not or will not be handicapped by this course of decision, I do not understand the ordinary principles which govern human conduct."

This case also has been many times cited with approval. Some of the points apparently decided in it, however, can hardly be supported. The ground seemingly taken by the majority, that the tax might be supported as an excise tax for the privilege of coming into the State, is certainly unsound; for later as well as earlier cases agree that a State cannot ex-

clude from its territory a corporation or an individual engaged in interstate commerce or in the service of the national government.⁶³

§ 759. Proportionate tax on entire property of corporation.

In spite of its mistaken *dicta*, the case is authoritative; and some more tenable ground must be found on which to place the decision. It will probably be found in the later case of Postal Telegraph Cable Co. v. Adams.⁶⁴ A statute of Mississippi laid upon all telegraph companies, domestic as well as foreign, a tax for the privilege of carrying on their business, graduated in each case upon the amount of property in miles and its value; and exempted them from all other taxation. It was found in the case that the burden of this tax was less than the ordinary tax on the same amount of property. The court said that although a franchise tax upon a corporation

⁶³ "Only two exceptions or qualifications have been attached to it [the right of a state to exclude a foreign corporation] in all the numerous adjudications in which the subject has been considered, since the judgment of this court was announced more than half a century ago in *Bank v. Earle*, 13 Pet. 519, 10 L. ed. 274. One of these qualifications is that the state cannot exclude from its limits a corporation engaged in interstate or foreign commerce, established by the decision in *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S. 112, 24 L. ed. 708. The other limitation on the power of the state is where the corporation is in the employ of the general government,—an obvious exception, first stated, we think, by the late Mr. Justice Bradley in *Stockton v. Railroad Co.*, 32 Fed. 9, 14." Field, J. (who delivered the opinion in *Maine v. Grand Trunk Ry.*), in *Horn Silver Mining Co. v. New York*, 143 U. S. 305, 36 L. ed. 164.

"A state cannot exclude from its limits a corporation engaged in interstate or foreign commerce, or a corporation in the employment of the general government, either directly in terms or indirectly by the imposition of inadmissible conditions. Nevertheless the state may subject it to such property taxation as only incidentally affects its occupation, as all business, whether of individuals or corporations, is affected by common governmental burdens." Fuller, C. J., in *Postal Tel. Cable Co. v. Adams*, 155 U. S. 688, 39 L. ed. 311. For full collection of authorities see *Atl. & Pac. Tel. Co. v. Phila.*, 190 U. S. 160, 47 L. ed. 995.

⁶⁴ 155 U. S. 688, 39 L. ed. 311; followed in *Western U. Tel. Co. v. Taggart*, 163 U. S. 1, 41 L. ed. 49; *Adams Exp. Co. v. Ohio State Auditor*, 165 U. S. 194, 41 L. ed. 683.

engaged in interstate commerce is invalid, and although this purported to be a franchise tax, yet the substance rather than the shadow was to be looked at. This tax was in lieu of another tax on property, and did in fact stand for a tax on the intangible property within the State, and it was therefore valid. The court thus summed up the principles on which the case proceeded: ⁶⁵

“ It is settled that where, by way of duties laid on the transportation of the subjects of interstate commerce or on the receipts derived therefrom, or on the occupation or business of carrying it on, a tax is levied by a state on interstate commerce, such taxation amounts to a regulation of such commerce, and cannot be sustained. But property in a state belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax may be imposed on the corporation on account of its property within a state, and may take the form of a tax for the privilege of exercising its franchises within the state, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the state (the exaction, therefore, not being susceptible of exceeding the sum which might be leviable directly thereon), and if payment be not made a condition precedent to the right to carry on the business, but its enforcement left to the ordinary means devised for the collection of taxes. The corporation is thus made to bear its proper proportion of the burdens of the government under whose protection it conducts its operations, while interstate commerce is not in itself subjected to restraint or impediment. . . .

“ Doubtless, no state could add to the taxation of property, according to the rule of ordinary property taxation, the burden of a license or other tax on the privilege of using, constructing, or operating an instrumentality of interstate or international commerce, or for the carrying on of such commerce; but the value of property results from the use to which it is put,

⁶⁵ At pp. 695, 700.

as well as the tangible assets of the company. The various forms taken by this tax are well summed up by Mr. Chief Justice Fuller in *Adams Express Company v. Ohio State Auditor*.⁶⁸

“As to railroad, telegraph, and sleeping car companies engaged in interstate commerce, it has often been held by this court that their property, in the several States through which their lines or business extended, might be valued as a unit for the purposes of taxation, taking into consideration the uses to which it was put, and all the elements making up aggregate value, and that a proportion of the whole, fairly and properly ascertained, might be taxed by the particular State, without violating any Federal restriction.⁶⁹ The valuation was, thus, not confined to the wires, poles, and instruments of the telegraph company, or the roadbed, ties, rails, and spikes of the railroad company, or the cars of the sleeping car company, but included the proportionate part of the value resulting from the combination of the means by which the business was carried on,—a value existing to an appreciable extent throughout the entire domain of operation. And it has been decided that a proper mode of ascertaining the assessable value of so much of the whole property as is situated in a particular state is, in the case of railroads, to take that part of the value of the entire road which is measured by the proportion of its length therein to the length of the whole,⁷⁰ or taking as the basis of assessment such proportion of the capital stock of a sleeping car company as the number of miles of railroad over which its cars are run in a particular State bears to the whole number

⁶⁸ 165 U. S. 194, 220, 41 L. ed. 683.

⁶⁹ Citing *Western Union Tel. Co. v. Massachusetts*, 125 U. S. 530, 31 L. ed. 790; *Massachusetts v. W. U. Tel. Co.*, 141 U. S. 40, 35 L. ed. 628; *Maine v. Grand Trunk Ry.*, 142 U. S. 217, 35 L. ed. 994; *Pittsburgh, C. & C. Ry. v. Backus*, 154 U. S. 421, 38 L. ed. 1031; *Cleveland, C. & C. Ry. v. Backus*, 154 U. S. 439, 38 L. ed. 1041; *Western Union Tel. Co. v. Taggart*, 163 U. S. 1, 41 L. ed. 49; *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18, 35 L. ed. 613.

⁷⁰ Citing *Pittsburgh, C. & C. Ry. v. Backus*, 154 U. S. 421, 38 L. ed. 1031.

of miles traversed by them in that and other States,⁷¹ or such a proportion of the whole value of the capital stock of a telegraph company as the length of its lines within a State bears to the length of all its lines everywhere, deducting a sum equal to the value of its real estate and machinery subject to local taxation within the State.⁷²

"Doubtless there is a distinction between the property of railroad and telegraph companies and that of express companies. The physical unity existing in the former is lacking in the latter; but there is the same unity in the use of the entire property for the specific purpose, and there are the same elements of value arising from such use."

Taxation of this sort, however, must not include any property which has a *situs* outside the taxing State. If such property were included in the computation, it could no longer be regarded as the exaction of a tax for the protection of property but must stand or fall as a franchise tax; and as such it would be an unconstitutional interference with interstate commerce.⁷³

§ 761. Tax on special franchise granted by State.

It is of course clear that although a State may not exclude a corporation engaged in interstate commerce, it is not obliged to grant a franchise to such a corporation, as for instance to make it a domestic corporation. No fee exacted for the privilege of becoming a corporation under the law of the State can be contrary to the Constitution of the United States, whatever may be the business of the corporation.⁷⁴

§ 762. Tax as return for special police supervision.

When the State finds it necessary to furnish special police supervision for a foreign corporation engaged in interstate

⁷¹ Citing *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18, 35 L. ed. 613.

⁷² Citing *Western Union Tel. Co. v. Taggart*, 163 U. S. 1, 41 L. ed. 49.

⁷³ *Fargo v. Hart*, 193 U. S. 490.

⁷⁴ *Ashley v. Ryan*, 153 U. S. 436, 38 L. ed. 773.

commerce, it may legally and constitutionally oblige the corporation to pay the reasonable expense of such supervision. Such expense need not necessarily be paid out of the general tax levy. The exaction of compensation for the supervision furnished is not a tax in any proper sense; it is compensatory, even though the amount is estimated and exacted in advance.⁷⁵

But if the amount exacted by way of license fee is found to be unreasonable, the tax is invalid.⁷⁶ And where the evidence showed that nothing had been done or attempted by the local authorities for the protection of the lives and property of its citizens, and that the fee charged is many times what such protection would cost, the tax is unreasonable and invalid.⁷⁷

§ 763. General conclusion.

It would seem then that a State tax upon a foreign corporation engaged in interstate commerce in order to be valid must fulfill two requirements: first, it must be levied equally upon domestic and foreign corporations; second, it must in substance be a means of making property within the State bear its share of the burdens of government, or of paying for the grant of special privileges or for special services not connected with interstate commerce. If the tax fails in either of these respects it is a tax on commerce, and is invalid.

⁷⁵ *Western U. T. Co. v. New Hope*, 187 U. S. 419, 47 L. ed. 240; *Altantic & P. Tel. Co. v. Philadelphia*, 190 U. S. 160, 47 L. ed. 995.

⁷⁶ *Postal Telegraph Cable Co. v. New Hope*, 192 U. S. 551.

⁷⁷ *Postal Telegraph Cable Co. v. Taylor*, 192 U. S. 641.

TITLE VI.
OF THE RECHARTERING AND THE DISSOLUTION OF
CORPORATIONS.

CHAPTER XXXI

TWO-STATE CORPORATIONS.¹

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| <p>§ 771. Association of corporations chartered by two States.</p> <p>772. Rechartering of a corporation in a second State.</p> <p>773. What amounts to a rechartering.</p> <p>774. Nature of the rechartered corporation.</p> <p>775. Legal result of rechartering.</p> <p>776. Consolidation of corporations by one State.</p> <p>777. Effect on the constituent corporations.</p> <p>778. Consolidation by the joint act of two States.</p> <p>779. Nature of such consolidated corporation.</p> | <p>§ 780. Consolidation of a corporation which has been rechartered.</p> <p>781. Which constituent corporation is responsible for act of consolidated corporation.</p> <p>782. Suits by and against a consolidated corporation.</p> <p>783. Present difficulties in dealing with consolidated corporation.</p> <p>784. Statutory provisions for consolidation.</p> <p>785. Statutory provisions for holding corporations.</p> |
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§ 771. Association of corporations chartered by two States.

It is not unusual for the stockholders of a corporation to associate themselves for the formation (either in the same State or more often in another State) of another corporation which is intended to have more or less close business relations with the first corporation. Neither the business relations in-

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tended nor the identity of the stockholders has any effect upon the nature of the corporations; they are, notwithstanding, independent entities. So in a case where it was found that the two corporations in question, bearing the same name, expected "to work together in unison, as practically one and the same body, dealing in the same markets and with the same customers and in the same class of goods," the court said: "The only unity is the ownership of the stock. But this is of no consequence, because there is nothing in the law to prevent adverse ownership in this respect hereafter, and the moment the stock of the two corporations shall pass into different hands, the corporations will become independent in fact, as well as in legal contemplation. Beyond all question they may now legally contract with each other. They may acquire rights and transact business inimical to each other, and they may sue each other and make defence thereto, just as different natural individuals may do."²

But when a corporation created in one State becomes reincorporated in another, or where by the concurrent action of two States a consolidation is allowed of two corporations, one created by each State, we have a question of more difficulty. In the eye of the business man there is but a single corporation, chartered in both States; not merely two closely connected and co-operating corporations. The corporation thus formed differs from an ordinary corporation, if at all, only in the wider extent of its operations. But the lawyer cannot so easily dispose of the problem. The creation of a corporation being an act of sovereignty, the mutual independence of sovereigns prevents any sovereign from affecting in any degree the legal nature of an association within the territory of another; each can act within his own territory only; and no two can act jointly. It is therefore theoretically impossible for the same corporation to be created by two States. As the Supreme Court of Illinois said of a corporation chartered both in

² Scholfield, J., in *Drumond Tobacco Co. v. Randle*, 114 Ill. 412, 428, 27 N. E. 536.

Illinois and in Missouri:³ "The legislatures of this State and of Missouri cannot act jointly, nor can any legislation of the last-named State have the least effect in creating a corporation in this State. Hence the corporate existence of appellants, considered as a corporation of this State, must spring from the legislation of the State which by its own vigor performs the act. The States of Illinois and Missouri have no power to unite in passing any legislative act. It is impossible, in the very nature of their organizations, that they can do so. They cannot so fuse themselves into a single sovereignty, and as such create a body politic which shall be a corporation of the two States without being a corporation of each State or of either State."

Chief Justice Cooley said of a similar corporation:⁴

"It comes into existence there by an exercise of sovereign will; and, though it may be allowed to exercise corporate functions within another sovereignty, it is impossible to conceive of one joint act, performed simultaneously by two sovereign States, which shall bring a single corporation into being, except it be by compact or treaty."⁵

And in the leading case on the subject Mr. Chief Justice Taney said :⁶

"It is true that a corporation by the name and style of the plaintiffs appears to have been chartered by the States of Indiana and Ohio, clothed with the same capacities and powers, and intended to accomplish the same objects, and it is spoken of in the laws of the States as one corporate body, exercis-

³ Quincy R. R. Bridge Co. v. Adams County, 88 Ill. 615, 619.

⁴ Chicago & N. W. R. R. v. Auditor General, 53 Mich. 91, 18 N. W. 586.

⁵ These passages were quoted with approval and followed in *Nashua & L. R. R. Corp. v. Boston & L. R. R. Corp.*, 136 U. S. 356, 34 L. ed. 363.

The suggestion of a possible compact between the States, creating a single corporation, appears to be adopted in Pennsylvania. *Brocket v. Ohio & P. R. R.*, 14 Pa. 241, 244, *per* Gibson, C. J.; *Cleveland & P. R. R. v. Spear*, 56 Pa. 325, 332, *per* Agnew, J. The application made of the doctrine is that the charter must not be construed according to the local usage of either State.

⁶ *Railroad Co. v. Wheeler*, 1 Black, 286, 297, 17 L. ed. 120.

ing the same powers and fulfilling the same duties in both States. Yet it has no legal existence in either State, except by the law of the State. And neither State could confer on it a corporate existence in the other, nor add to or diminish the powers to be there exercised. It may, indeed, be composed of and represent, under the corporate name, the same natural persons. But the legal entity or person, which exists by force of law, can have no existence beyond the limits of the State or sovereignty which brings it into life, and induces it with its faculties and powers. The President and Directors of the Ohio and Mississippi Railroad Company is, therefore, a distinct and separate corporate body in Indiana from the corporate body of the same name in Ohio, and they cannot be joined in a suit as one and the same plaintiff, nor maintain a suit in that character against a citizen of Ohio or Indiana in a Circuit Court of the United States."

§ 772. Rechartering a corporation in a second State.

The simplest form of action by a second State is the act of conferring a domestic charter on a foreign corporation which does business within the State. The charter from the first State is of course not vacated by the second charter;⁷ and it follows that the same association of members or stockholders may be a corporation of two different States,⁸ and domiciled in each.⁹ But it is clear that the result is two corporations, not one. These corporations may have the same name, powers, and liabilities, be composed of the same stockholders, and governed by the same officers; but they cannot be a single legal person.

"Identity of the name, powers, and purposes does not create an identity of origin or existence, any more than any other statutes, alike in language, passed by different leg-

⁷ *Nashua & L. R. R. Corp. v. Boston & L. R. R. Corp.*, 136 U. S. 356, 34 L. ed. 363.

⁸ *Guinault v. R. R.*, 41 La. Ann. 571; *Bernhardt v. Brown*, 119 N. C. 506, 26 S. E. 162.

⁹ *Martin v. B. & O. R. R.*, 151 U. S. 673, 38 L. ed. 311.

islative bodies, can properly be said to owe their existence to both. To each statute and to the corporation created by it, there can be but one legislative paternity." ¹⁰

§ 773. What amounts to a rechartering.

It is not always easy to determine whether legislation of the second State has or has not conferred a new charter upon the corporation. A mere license to a foreign corporation to act within a State does not reincorporate it, so as to make it a corporation of the enabling State. This express license is after all only permission to do what the common law already allows it to do; or if it goes further, as for instance if it gives permission to exercise a franchise, it is no more than may be granted to an alien individual, and is therefore not tantamount to making the corporation a domestic one.¹¹ Thus an enabling act to permit a foreign corporation to hold real estate does not make it a domestic corporation.¹² And where a railroad company is allowed by the legislature to extend its line

¹⁰ Field, J., in *Nashua & L. Corp. v. Boston & L. Corp.*, 136 U. S. 356, 34 L. ed. 363. See to the same effect *Stout v. S. C. & P. R. R.*, 3 McCr. 1, 8 Fed. 794; *Central Tr. Co. v. St. Louis, A. & T. Ry.*, 41 Fed. 551; *Granger's L. & H. Ins. Co. v. Kamper*, 72 Ala. 325; *Kahl v. Memphis & C. R. R.*, 95 Ala. 337; *State v. No. Cent. Ry.*, 18 Md. 213; *County of Allegheny v. Cleveland & P. R. R.*, 51 Pa. 228, 88 A. D. 579; *Railroad v. Barnhill*, 91 Tenn. 395; *Rece v. Newport News & M. V. Co.*, 32 W. Va. 164. Expressions may be found in a few cases which seem to have a contrary tendency. *Copeland v. M. & C. R. R.*, 3 Woods, 651, 658, Fed. Cas. No. 3209; *Bishop v. Brainerd*, 28 Conn. 288, 299; *Bridge Co. v. Mayer*, 31 Oh. S. 317, 325. But on examination these expressions will appear to have been uttered *obiter*.

¹¹ *Martin v. Baltimore & O. R. R.*, 151 U. S. 673, 38 L. ed. 311; *Louisville & c. Ry. v. Louisville Tr. Co.*, 174 U. S. 552, 43 L. ed. 1081; *State Treasurer v. Auditor General*, 46 Mich. 224, 234; *Daniel v. Gold Hill Mining Co.*, 28 Wash. 411, 68 Pac. 884; *Quessenberry v. Peoples' B. & L. Assoc.*, 44 W. Va. 512, 30 S. E. 73; *Savage v. Peoples' B. & L. Assoc.*, 45 W. Va. 275, 31 S. E. 991.

¹² *Blackstone Mfg. Co. v. Blackstone*, 13 Gray (Mass.), 488; *State v. Delaware, L. & W. R. R.*, 30 N. J. L. 473; *In re Prime's Estate*, 64 Hun, 50, 18 N. Y. Supp. 603; *Lauder v. Burke*, 65 Oh. S. 532, 63 N. E. 69; *Quessenberry v. Peoples' B. & L. Assoc.*, 44 W. Va. 512, 30 S. E. 73.

into a foreign State (either by building its own road or by leasing another road already built) and to carry on its business there, the railroad company does not become a corporation of that State.¹³ In the same way where a bridge company chartered by Kentucky was forbidden to organize until Ohio passed an act enabling it to do business in that State, it was held (after the passing of the enabling act) to be a corporation of Kentucky alone.¹⁴ If the enabling act goes further, and permits the foreign corporation to enjoy within the State all the powers, rights and franchises conferred upon it by its charter, even this does not create it a domestic corporation.¹⁵

¹³ *Baltimore & O. R. R. v. Harris*, 12 Wall. 65, 20 L. ed. 354; *Martin v. B. & O. R. R.*, 151 U. S. 673, 38 L. ed. 311; *St. Louis & S. F. Ry. v. James*, 161 U. S. 545, 40 L. ed. 802; *Williams v. Missouri, K. & T. Ry.*, 3 Dill. 267, Fed. Cas. No. 17,728; *State Treasurer v. Auditor General*, 46 Mich. 224; *Illinois C. R. R. v. Sanford*, 75 Miss. 862, 23 So. 355; *Phillipsburg Bank v. Lackawanna R. R.*, 27 N. J. L. 206; *Dennistoun v. New York & N. H. R. R.*, 1 Hilt. (N. Y. C. P.) 62. The contrary opinion prevailed in Virginia and West Virginia with regard to the Baltimore & Ohio Railroad, which had been authorized to extend its road into Virginia. *Baltimore & O. R. R. v. Gallahue*, 12 Grat. (Va.) 655; *Baltimore & O. R. R. v. Wightman*, 29 Grat. (Va.) 431; *Baltimore & O. R. R. v. Noell*, 32 Grat. (Va.) 394; *Goshorn v. Ohio County*, 1 W. Va. 308; *Baltimore & O. R. R. v. Supervisors*, 3 W. Va. 319. The principal point in those cases, however, was the subjection of the railroad to the laws of the State; and the result can probably be supported in all the cases. To the same effect see *Alabama G. S. R. R. v. Fulgham*, 87 Ga. 263, 13 S. E. 649.

¹⁴ *Covington v. Covington Bridge Co.*, 10 Bush (Ky.), 69.

¹⁵ *Pennsylvania R. R. v. St. Louis, A. & T. N. R. R.*, 118 U. S. 290, 30 L. ed. 83; *Goodlett v. Louisville & N. R. R.*, 122 U. S. 391, 30 L. ed. 1230; *Louisville, N. A. & C. Ry. v. Louisville Tr. Co.*, 174 U. S. 552, 43 L. ed. 108 (*semble*); *Goodloe v. Tennessee & C. R. R.*, 117 Fed. 348; *Martin v. Mobile & O. R. R.*, 7 Bush (Ky.), 116; *State v. Mutchler*, 42 N. J. L. 461; *State Board of Assessors v. Morris & E. R. R.*, 49 N. J. L. 193, 219, 7 Atl. 826; *Daniel v. Gold Hill Min. Co.*, 28 Wash. 411, 68 Pac. 884.

In *Railroad v. Peoples*, 31 Oh. S. 537, it was held that a foreign railroad company, operating a domestic railroad by permission of the legislature, which provided that it might sue and be sued like a domestic corporation, was subject to garnishment as a resident. The court said in the course of its opinion, but obviously *obiter*, that it was to be deemed a domestic corporation.

If a foreign corporation complies with a statute requiring it to file a copy of its charter with the secretary of state before doing business, it does not thereby become a domestic corporation;¹⁶ nor does it do so by complying with the requirement of keeping a set of books within the State.¹⁷

But it is entirely within the power of the second State to reincorporate the foreign corporation, thus making it a corporation of both States.

"Instead of merely licensing a foreign corporation to operate a railroad or to transact any other business within its borders, a State may, for reasons of its own, adopt the foreign corporation by creating it a domestic corporation with the same franchises and powers that it exercises in the State which originally created it, or with powers that are less or more extensive."¹⁸ Whether the second State has chosen to do this in any particular case is a matter of interpretation.¹⁹

"It may not be easy in all such cases to distinguish between the purpose to create a new corporation which shall owe its existence to the law or statute under consideration, and the intent to enable the corporation already in existence under the laws of another State to exercise its functions in the State where it is so received. . . . To make such a company a corporation of another State, the language used must imply creation or adoption in such form as to confer the power usually exercised over corporations by the State or by the legislature, and such as a State corporation owes to its creator. The mere grant of privileges or powers to it as an existing

¹⁶ *St. Louis & S. F. Ry. v. James*, 161 U. S. 545, 40 L. ed. 802; *Chicago, I. & N. P. R. R. v. Minnesota & N. W. R. R.*, 29 Fed. 337; *Rust v. United States Waterworks Co.*, 70 Fed. 129.

¹⁷ *Liverpool, &c. Ins. Co. v. Assessors*, 44 La. Ann. 760, 11 So. 91; *Ry. v. Harrison*, 73 Tex. 103.

¹⁸ *Thayer*, Circuit Judge, in *Missouri Pac. Ry. v. Meeh*, 69 Fed. 753, 759.

¹⁹ *Goodlett v. Louisville & N. R. R.*, 122 U. S. 391, 406, 30 L. ed. 1230; *Blackburn v. Selma &c. R. R.*, 2 Flip. 525, Fed. Cas. No. 1467; *Goodloe v. Tennessee &c. R. R.*, 117 Fed. 348.

corporation, without more, does not do this, and does not make it a citizen of the State conferring such powers.”²⁰

If the enabling act provides that the foreign corporation “shall be a corporation” of the enabling State, and shall possess as large powers as are possessed by certain corporations of the State, the act is one of incorporation, and the foreign corporation becomes a domestic one.²¹ An act authorizing a foreign railroad company to purchase the franchise and road of a domestic company, and to enjoy all the rights and privileges and to be subject to the duties and liabilities of that company makes it a domestic corporation.²² So where by statute a foreign corporation wishing to carry on business within the State must first file a copy of its charter, whereupon it shall become a domestic corporation, it of course becomes such a corporation at once upon filing its charter;²³ and if such a corporation has done business in the State it will be presumed to have complied with the law, and therefore to be a domestic corporation.²⁴

§ 774. Nature of the rechartered corporation.

As has been seen, the corporation of each State is in its origin independent of the other; and yet in many ways this double corporation is the same body in the two States. It has for instance been held that where the legislature of a State adopts a foreign corporation as a corporation of its own

²⁰ Miller, J., in *Pennsylvania R. R. v. St. Louis, A. & T. H. R. R.*, 118 U. S. 209, 30 L. ed. 83.

²¹ *Indianapolis & S. L. R. R. v. Vance*, 96 U. S. 450, 24 L. ed. 752; *Memphis & C. R. R. v. Alabama*, 107 U. S. 581, 27 L. ed. 518; *Uphoff v. Chicago, S. L. & N. O. R. R.*, 5 Fed. 545; *Granger's L. & H. Ins. Co. v. Kamper*, 72 Ala. 325; *McGregor v. Erie Ry.*, 35 N. J. L. 115; *Layden v. Knights of Pythias*, 128 N. C. 546, 39 S. E. 47.

²² *Clark v. Barnard*, 108 U. S. 436, 27 L. ed. 780; *Graham v. Boston, H. & E. R. R.*, 118 U. S. 161, 30 L. ed. 196; *Angier v. East T. V. & G. R. R.*, 74 Ga. 634.

²³ *James v. St. Louis & S. F. Ry.*, 46 Fed. 47.

²⁴ *Young v. South Tredegar Iron Co.*, 85 Tenn. 189, 2 S. W. 202. See *Illinois B. & L. Assoc. v. Walker*, (Tenn. Ch.) 42 S. W. 197.

State, there is no need of an acceptance of this charter or of a separate organization; the existing organization of the foreign corporation was adopted bodily.²⁵ So where a bridge corporation was created by precisely similar acts of Pennsylvania and New Jersey, neither to take effect till the other act was passed, it was held that the capital stock and property belonged in its entirety to each corporation, and was taxable as a unit in New Jersey.²⁶ The court said :

"The prosecutors are a private corporation of this State, but of a peculiar character. So far as their corporate authority in Pennsylvania is concerned, that is foreign to this State, and *vice versa*. The private corporation of this State is blended with the foreign corporation of the other State. Their mode of organization blends the foreign element or quality with the domestic here. Yet for all the purposes of law, it is a corporation of this State. It is also in Pennsylvania. It is not a corporation of Pennsylvania, owing its existence, as a body, to that State, and merely recognized for certain purposes here. It is no more created in that State than in this. It was not formed by the independent act of either State. It has a dual organization, and when organized it becomes capable of acting as one body in either State, and liable to be treated as such. Its objects of taxation could be reached either here or in Pennsylvania, or both."

The idea here expressed, though logically difficult, is quite in accordance with the commercial conception of such a corporation. This mercantile conception is constantly struggling for recognition in the decisions; and the result is an uncertainty and inconsistency of legal theory, which now tends toward the legal conception of the corporations as distinct,

²⁵ *Blackburn v. S. M. & M. R. R.*, 2 Flap. 525, Fed. Cas. No. 1467; *Louisville Tr. Co. v. Louisville & N. R. R.*, 75 Fed. 433. But see *Phila. W. & B. R. R. v. Kent County R. R.*, 5 Houst. (Del.) 127, where it was held in such case that if the corporation did nothing under its new charter it did not become a corporation of the second State.

²⁶ *State v. Metz*, 32 N. J. L. 199.

now toward the mercantile conception of identity and dual organization.

§ 775. Legal result of rechartering.

The most important and the most firmly established result of the commercial theory of quasi-identity of the two corporations is that they may have a single stock book and body of stockholders, may hold meetings in either State to bind the corporation in all States, and may at such meetings elect officers who can act as such in all the States which have chartered the corporation. This doctrine, first put forward in the case of *Bridge Company v. Mayer*,²⁷ was firmly established by the Supreme Court of the United States.²⁸ A mortgage of the property of a railroad company created by the laws of Massachusetts, Rhode Island, Connecticut and New York had been authorized at a stockholders' meeting held in New York; and this vote was held sufficient to bind the property of the company everywhere. The court said:

"The Boston, Hartford and Erie Company, therefore, though made up of distinct corporations, chartered by the legislatures of different States, had a capital stock which was a unit, and only one set of shareholders, who had an interest, by virtue of their ownership of shares of such stock, in all of its property everywhere. In its organization and action, and the practical management of its property, it was one corporation having one board of directors; though in its relations to any State, it was a separate corporation, governed by the laws of that State as to its property therein. It, therefore, had a domicile in each State, and the incorporators or shareholders could, in the absence of any statutory provision to the contrary, hold meetings and transact business in any one State, so as to bind the corporation in respect to its property everywhere."

In other ways the same doctrine has been applied. So where a corporation was chartered by both North Carolina

²⁷ 31 Oh. St. 317, 325.

²⁸ *Graham v. Boston, H. & E. R. R.*, 118 U. S. 161, 30 L. ed. 196.

and Virginia to build a single line of railroad in both, it seems that a forfeiture of the charter may be decreed in North Carolina for failure to build part of the line in Virginia;²⁹ a corporation chartered in two States may be restrained as to all its corporate acts by the courts of either State;³⁰ but it has been held that the *ultra vires* act of such a corporation cannot be ratified by the legislature of only one of the incorporating States.³¹ Where this composite corporate body acts through its agents in a State where it is not incorporated, it would seem to be a partnership of the several corporations, which would then be jointly liable.³²

The anomalous position of such a composite corporation is obvious. While for instance it is allowed to hold its meetings and keep its books in one of the incorporating States, that State may at any time annul its charter; the effect of which would be that it would merely cease to be a corporation of that State, without ceasing to be a valid corporation in the other State.³³ It could therefore hold no more meetings in the former State, since the charter of the latter State could have no effect to make it a corporation there; yet while the former State permitted it to exist, a meeting there bound it as a corporation in the latter State. In short, the former State is able to confer upon it, as a corporation of the latter State, a power which the latter State itself cannot confer.

§ 776. Consolidation of corporations by one State.

The process of reincorporating is a process of multiplication. The further tendency of business is not toward multiplication, but toward consolidation. Of the two theoretically

²⁹ *Attorney General v. Petersburg & R. R. R.*, 6 Ired. (N. C.) 456, 472, *per* Ruffin, C. J.

³⁰ *State v. No. Cent. Ry.*, 18 Md. 193, 213; *Freight Discrimination Cases*, 95 N. C. 434.

³¹ *Fisk v. Chicago, R. I. & P. R. R.*, 53 Barb. (N. Y.) 513.

³² *Bissell v. Michigan So. & N. I. Ry.*, 22 N. Y. 258.

³³ *Kahl v. Memphis & C. R. R.*, 95 Ala. 337; *Hart v. B. H. & E. R. R.*, 40 Conn. 524.

independent corporations chartered by two States, or of two such corporations really independent in origin, it is desired to make a single corporation. This is accomplished by consolidating the two corporations into one.

Such consolidation can be effected only by legislation.³⁴ A private agreement between the corporations to become one could have no legal effect, for since the original incorporations can only be accomplished by law, so the consolidation, if it is to create a new legal person from the union of the existing elements, must also be a creature of law.

The simplest method of consolidation consists in one of the States which created an existing corporation, or even a third State, granting a new charter;—thus creating an entirely new corporation into which the old corporations may be completely merged, or to which they may transfer their entire business. This new corporation is of course an ordinary and simple corporation of the State which grants the charter, and stands in the same relation to the State as any of its corporations; it may be taxed as a domestic corporation,³⁵ its actions may be controlled by the State like those of any domestic corporation,³⁶ it may without a special grant of right take land by eminent domain on the same terms as a domestic corporation,³⁷ and its domicile is in the State.³⁸

§ 777. Effect on the constituent corporations.

The creation of the new corporation does not of itself put an end to the existence of the old ones, which may remain in existence indefinitely; indeed, it is often desirable to continue

³⁴ *Pearce v. Railroad*, 21 How. 441, 16 L. ed. 184; *Continental Tr. Co. v. Toledo, S. L. & K. C. R. R.*, 82 Fed. 642; *American L. & T. Co. v. Minnesota & N. W. R. R.*, 157 Ill. 641, 42 N. E. 153; *New York & S. Can. Co. v. Fulton Bank*, 7 Wend. (N. Y.) 412.

³⁵ *Ashley v. Ryan*, 153 U. S. 436, 38 L. ed. 773.

³⁶ *Smith v. Lake Shore & M. S. Ry.*, 114 Mich. 460, 72 N. W. 328.

³⁷ *Toledo, A. A. & G. T. Ry. v. Dunlap*, 47 Mich. 456, 11 N. W. 271.

³⁸ *Stone v. Farmers' L. & T. Co.*, 116 U. S. 307, 29 L. ed. 636; *Trester v. Mo. Pac. Ry.*, 33 Neb. 171, 49 N. W. 1110.

the old corporations in existence in order to preserve valuable franchises which would not pass to the new corporation.³⁹ But on the other hand the new charter may provide for the old organizations coming to an end. Thus where it was provided that all stock in the old corporations should be called in and replaced by stock of the new corporation, that would work a dissolution of the old corporations so far as they were within the control of the State chartering the new corporation, that is, of all corporations chartered by that State. The legislature having power to dissolve its old corporation as well as to create the new one, it could not more effectually indicate its intention to do so.

"It is impossible to conceive of a corporation existing without stock or certificates representing the interests of the corporators in the organization. Now, if the act provides that these certificates shall be surrendered, and certificates in another company issued in their place, what becomes of the prior companies? Who are their stockholders, who their officers? If the stock in the new company is sold, what interest in the prior companies passes by the sale? There can be but one answer to these questions. The property and franchises of the prior companies are gone as much as if they had formally surrendered their charters. The new company may doubtless receive by transmission from its constituent companies their property, rights, privileges, and franchises, including any immunity from taxation; but it receives them as an heir receives the estate of his ancestor, or as a grantee receives the estate of his grantor, by inheritance, succession, or purchase. The result is not a mere union or partnership of two companies, nor the merger of the franchises of one in another, but the extinguishment of one and the creation of another in its place."⁴⁰

³⁹ *Keokuk & W. R. R. v. Missouri*, 152 U. S. 301, 38 L. ed. 450, and cases cited.

⁴⁰ *Brown, J.*, in *Keokuk & W. R. R. v. Missouri*, *supra*; and see *Eaton & H. R. R. v. Hunt*, 20 Ind. 457.

§ 778. Consolidation by the joint act of two States.

When the consolidation of corporations of two States takes place not by means of a charter granted by a single State, but by permission given by both States, the position of the corporation is rather difficult to determine. In neither State, it is clear, is it a foreign corporation.⁴¹ Since two States, as we have seen, cannot create a single corporation, the consolidated body must at least constitute as many corporations as there are States concerned,⁴² each corporation being subject to the laws (as for instance those regulating business or concerning taxation) of its own State,⁴³ and having the powers of the constituent corporation of that State.⁴⁴ And so where one of the States forbade a mortgage, such mortgage given by the consolidated corporation was void as to the property in that State.⁴⁵

§ 779. Nature of such consolidated corporation.

Are these separate corporations merely the original corporations, which by the consolidation have been permitted to form an extra-legal business combination, or is there in addition a new corporation, or rather a set of new corporations, either succeeding to the business of the old corporations without effecting a dissolution of them, or entirely superseding them?

⁴¹ *Muller v. Dows*, 94 U. S. 444, 24 L. ed. 207; *Winn v. Wabash R. R.*, 118 Fed. 55; *In re St. Paul & N. P. Ry.*, 36 Minn. 85, 30 N. W. 432; *State v. Chicago, B. & Q. R. R.*, 25 Neb. 156, 41 N. W. 125; *Smith v. Boston, C. & M. R. R.*, 33 N. H. 337; *In re Sage*, 70 N. Y. 220; *Sprague v. Hartford Ry.*, 5 R. I. 233.

⁴² *Nashua & L. R. R. v. Boston & L. R. R.*, 136 U. S. 356, 34 L. ed. 363; *Pac. Ry. v. Mo. Pac. Ry.*, 23 Fed. 565; *Mo. Pac. Ry. v. Meeh*, 69 Fed. 753; *Continental Tr. Co. v. Toledo, S. L. & K. C. R. R.*, 82 Fed. 642; *Chicago & W. I. R. R. v. Lake Shore & M. S. Ry.*, 10 Biss. 122, 5 Fed. 19; *Racine & M. R. R. v. Farmers' L. & T. Co.*, 49 Ill. 331, 348, 95 A. D. 595.

⁴³ *Stone v. Farmers' L. & T. Co.*, 116 U. S. 307, 29 L. ed. 636; *Quincy R. R. Bridge Co. v. Adams County*, 88 Ill. 615; *Ohio & M. R. R. v. Weber*, 96 Ill. 443; *Chicago & N. W. Ry. v. Auditor General*, 53 Mich. 79; *Sprague v. Hartford Ry.*, 5 R. I. 233.

⁴⁴ *Mead v. New York, etc., R. R.*, 45 Conn. 199.

⁴⁵ *Pittsburgh & S. L. R. R. v. Rothschild*, (Pa.) 4 Cent. 107, 4 Atl. 385.

This question is not easy to answer. It has been urged by high authority that the permission to consolidate, not being accompanied by a new charter from any one State, does not create a corporation; that the consolidated body formed in accordance with the permission of the States concerned is at most a corporation *de facto*, or perhaps only a business union of the several companies under a common name, the old corporations still exercising their several powers in their respective States in the name of the consolidation.⁴⁶ It is clear that the constituent corporations do not necessarily or generally cease to exist.⁴⁷ But it is certain that no corporation *de facto* can be recognized if there can be no corporation *de jure*,⁴⁸ and if they do cease to exist it must be because each State has so provided,⁴⁹ which is not a natural interpretation, because neither State, in authorizing the consolidation, "can have intended to abandon all jurisdiction over its own corporation created by itself."⁵⁰ But though the old corporations usually continue in existence, a new association of some sort is undoubtedly formed, a community of stock and interest between the companies; there is almost invariably a new set of books opened, new stock issued, new stockholders and new officers provided for the consolidated company. This, it would seem, is sufficient to create a new commercial entity, and since it results from permission given by law the new entity constitutes a legal person.⁵¹ But this new person is not created by the law of any one State. Concurrent legislation of all the States was essential to the completion of the consolidation.⁵²

⁴⁶ Cooley, J., in *State Treasurer v. Auditor General*, 46 Mich. 224.

⁴⁷ *Ohio & M. Ry. v. People*, 123 Ill. 467, 14 N. E. 874.

⁴⁸ *American L. & T. Co. v. Minnesota & N. W. R. R.*, 157 Ill. 641, 42 N. E. 153.

⁴⁹ *People v. New York, C. & S. L. R. R.*, 129 N. Y. 474, 29 N. E. 959.

⁵⁰ *Field, J., in Nashua & L. Corp. v. Boston & L. Corp.*, 136 U. S. 356, 34 L. ed. 363.

⁵¹ *St. Louis, I. M. & S. Ry. v. Berry*, 113 U. S. 465, 28 L. ed. 1055; *Winn v. Wabash R. R.*, 118 Fed. 55.

⁵² *People v. New York, C. & S. L. R. R.*, 129 N. Y. 474, 29 N. E. 959.

The new corporation is no more a corporation of one State than of the other,⁵³ and as it cannot be created by the States jointly, it must be the anomalous association already considered,—a separate corporate body in each State, all however being as it were federated together, and in many respects capable of acting as one.⁵⁴ In the language of Chief Justice Cooley in *Chicago & Northwestern Railway v. Auditor General*:⁵⁵

“When the two unite they severally bring to the new entity the powers and privileges already possessed, and the consolidated company simply exercises in each jurisdiction the powers the corporation there chartered had possessed, and succeeds there to its privileges.⁵⁶ . . . When, therefore, two corporations created in different states consolidate, though for most purposes they are not thereafter to be separately regarded, yet in each state the consolidated company is deemed to stand in the place of the corporation to which it there succeeded, and of its members, and consequently to be a citizen of that state for many purposes, while in the other state it would stand in the place of the other corporation in respect to citizenship there.”

We must conclude then that when a number of corporations, created by different States, are allowed to consolidate by the States that created them, the constituent corporations may or may not be merged in the consolidated body and so lose their corporate existence, this depending in each case upon the will of the State of charter; but that by the consolidation new corporations are formed, equal in number to the number of enabling States, and each empowered to act in connection with the others. The consolidated corporation therefore does not differ in status from the corporation rechartered in another State than that which first created it.

⁵³ *Ohio & M. Ry. v. People*, 123 Ill. 467, 14 N. E. 874.

⁵⁴ *Winn v. Wabash R. R.*, 118 Fed. 55; *Ohio & M. Ry. v. People*, 123 Ill. 467, 14 N. E. 874; *Kincaid v. People*, 139 Ill. 213, 28 N. E. 1060.

⁵⁵ 53 Mich. 79, 91.

⁵⁶ Citing *Mississippi Valley Co. v. Chic., etc., R. R.*, 58 Miss. 846.

§ 780. Consolidation of a corporation which has been rechartered.

One more complication may ensue. A corporation formed in a State may be rechartered in a second State, and then consolidated with a corporation of a third State; what is the effect of the consolidation upon the rechartered corporation of the second State? Is it federated with the original corporation still? And what if the original corporation is dissolved by merger in the consolidated corporation?

This question was raised by the case of *Louisville Trust Company v. Louisville, New Albany and Chicago Railway*.⁵⁷ An Indiana corporation had been rechartered in Kentucky; and the Indiana corporation was then in accordance with legislation of both States concerned consolidated with an Illinois corporation. It was argued that since the consolidated company succeeded to all the property of the original company, and since the Kentucky company had no relation with the consolidated company, it ceased thereafter to exercise its franchises. But Taft, Circuit Judge, said:

“ We do not perceive that this consolidation creates any difficulty. The Kentucky corporation, having been once established, could not die except by its own act or that of the State which gave it being. Everything it had acquired in the way of property remained in it after the consolidation of its constituent with the Illinois corporation. It was not and could not be ousted of its franchises thereby. The Kentucky corporation, when incorporated, was intended by the legislature of Kentucky to be under the same organization and management as the Indiana company. When the incorporators of the Indiana company added others to their number by virtue of the laws of Indiana, and to this extent changed the management, the franchises which the incorporators had obtained by the incorporation of the old company in Kentucky was simply transferred by express provision of the articles of consolidation to the new organization. If it were necessary to

⁵⁷ 75 Fed. 433.

have such a transfer approved by the Kentucky legislature, we have it recognized and approved in the act of April 7, 1882, in recognizing and adding to the powers of the Kentucky corporation, which was then being managed by the consolidated corporation of Indiana and Illinois. The possibility of implied recognition and acquiescence in the effect of a consolidation by subsequent legislation is very clearly shown in the case of *McAuley v. Railroad*,⁵⁸ and in *Mead v. Railroad*.⁵⁹ Analogous instances of legislative recognition and acquiescence in corporate consolidation are found in *U. S. v. Southern Pac. Railroad*,⁶⁰ and *Railroad v. Poole*.⁶¹ It is argued that, by the consolidation, the entity of the Indiana corporation, which had been adopted as the constituent of the Kentucky corporation, ceased to be, and a new being appeared, a wholly different individual, in the shape of the consolidated corporation. It is clear from the Indiana statute of consolidation, and the decisions of that State construing their effect, that, whether the old constituent survives in the new consolidated corporation or dies, the new corporation has all the attributes of the old.⁶² If one of these attributes was that of being the constituent of a Kentucky corporation, there was no reason why the new corporation should not continue to enjoy that relation, provided objection was not made by the Kentucky legislature. Instead of objecting, the legislature, as we have seen, affirmatively approved the new condition brought about by the consolidation by the act of 1882."

From this opinion it would seem that upon the consolidation of the Indiana corporation with the Illinois corporation the rechartered corporation would *ipso facto* become federated with the consolidated company ; a result which could be prevented only by the affirmative action of the Kentucky

⁵⁸ 83 Ill. 348.

⁵⁹ 45 Conn. 199.

⁶⁰ 45 Fed. 596.

⁶¹ 32 Fed. 451.

⁶² Citing *Railroad Co. v. Boney*, 117 Ind. 501, 504, 20 N. E. 432.

legislature, thus exercising its power over its own corporation.

§ 781. Which constituent corporation is responsible for act of consolidated corporation.

Certain consequences of the principles we have been investigating remain to be considered. Suppose an act is done on behalf of the whole consolidated corporation, of which individual corporation is it the act? If done through an agent, it would seem that he is agent for all the corporations jointly; and indeed there is authority for holding that every act done on behalf of the consolidation, even if it is clearly done by one of the corporations, is done in behalf of all jointly. In short, this view would make all the corporations partners, and all responsible for the acts of each.⁶³ And it seems to be clear that a corporation of two States may be garnisheed in one of the States for wages due a servant for work done in the other State,⁶⁴ even though the garnishment proceedings were brought in one State for the express purpose of avoiding the exemption laws of the other.⁶⁵ And so it has been held that a ticket issued by a railroad chartered in two States may be treated as the contract of either corporation;⁶⁶ and that a judgment obtained in one State against a consolidated corporation there will support an action of debt on the judgment in the other State.⁶⁷ And it is clear that the consolidated corporation may be restrained in either State from acting contrary to its legal duty on any part of the line.⁶⁸ It was the intention of the legislature, said Judge Doe, "to create a corporation that

⁶³ *Newport & C. Bridge Co. v. Wooley*, 78 Ky. 523; *Smith v. New York, N. H. & H. R. R.*, 96 Fed. 504.

⁶⁴ *Georgia & A. Ry. v. Stollenwerck*, 122 Ala. 539, 25 So. 258; *Railroad v. Barnhill*, 91 Tenn. 395, 19 S. W. 21.

⁶⁵ *Wabash R. R. v. Dougan*, 142 Ill. 248, 31 N. E. 594.

⁶⁶ *Miss. & T. R. R. v. Ayres*, 16 Lea (Tenn.), 725.

⁶⁷ *Union Trust Co. v. Rochester & P. R. R.*, 29 Fed. 609.

⁶⁸ *McDuffee v. Portland & R. R. R.*, 52 N. H. 430; *Scofield v. L. S. & M. S. R. R.*, 43 Oh. S. 571, 3 N. E. 107; *Providence Coal Co. v. Providence & W. R. R.*, 15 R. I. 303, 4 Atl. 394.

might act, and be dealt with, as one and not two, in such matters as those involved in this suit." ⁶⁹ "The railroad is an entirety, whether within the State or without; and the artificial person, by the acts of the several States authorizing consolidation, has been created one, and not two or more, and no reason is perceived why it may not be dealt with by the courts of either State that has procured jurisdiction." ⁷⁰

But on the other hand an act done by the consolidated corporation in one State is to be taken as the act of the corporation of that State, since that corporation has been expressly created to act there.⁷¹ It has accordingly been held that where an accident happens upon a railroad chartered in two States, it is chargeable to the corporation of that State within which it happened;⁷² that a mortgage of that part of a railroad which lies in one State is the act of the corporation there chartered;⁷³ that a contract touching a right of way for a railroad is made with the corporation of the State in which the right of way lies;⁷⁴ and that assignment for benefit of creditors made by the corporation in one State does not carry the assets of the corporation in the other State.⁷⁵ But the cases are not consistent upon this point. Thus it has been held that the railroad company chartered in one State may be sued for a tort committed in another.⁷⁶ This confusion of opinion, though to be regretted, is not an unnatural result of the anomalous position of the corporation.

One may, perhaps, on the authorities and the reason of the thing, reach the following conclusions: An agent for the consolidated corporation may act for and bind all the members;

⁶⁹ *McDuffee v. Portland & R. R. R.*, *supra*, at p. 458.

⁷⁰ *Atherton, J.*, in *Scofield v. L. S. & M. S. Ry.*, *supra*, at p. 622.

⁷¹ *Stout v. S. C. & P. R. R.*, 3 McCr. 1, 8, 8 Fed. 794; *State v. Northern C. Ry.*, 18 Md. 213.

⁷² *Kahl v. Memphis & C. R. R.*, 95 Ala. 337, 10 So. 661.

⁷³ *Racine & M. R. R. v. Farmers' L. & T. Co.*, 49 Ill. 331.

⁷⁴ *Port Royal R. R. v. Hammond*, 58 Ga. 523.

⁷⁵ *Grangers' L. & H. Ins. Co. v. Kamper*, 72 Ala. 325.

⁷⁶ *Horne v. Boston & M. R. R.*, 18 Fed. 50.

and this would undoubtedly be true of an act done outside all the incorporating States. In one of the incorporating States, however, one should hold in strictness that it is the local corporation which is acting. But an act done anywhere binding one of the corporations will give a cause of action in either State of incorporation against the corporation in that State; whether because the corporations are to be taken as partners or, more probably, because the State in incorporating it subjected it to such a liability,—created it to be dealt with as one corporation and not two, in the language of Judge Doe.

§ 782. Suits by and against a consolidated corporation.

The same confusion seems to exist with regard to suits by or against such a corporation. Since a foreign corporation is not present, and cannot come into the State except by an agent, and since service of process on an agent will not generally give jurisdiction over the principal, it is not possible to get jurisdiction over a foreign corporation for purpose of suit in the ordinary way. Such a corporation may be sued only by its consent, express or implied; and jurisdiction is assumed over such foreign corporations only as come into the State to do business there.⁷⁷ But where the corporation is chartered by two States, the corporation which acts in each State is the corporation there chartered; the corporation of the other State does not come in to do business, and hence it is impossible that it should be sued. Suit against such a consolidated corporation in one of the States which has chartered it is therefore suit against a corporation of that State.⁷⁸ And therefore where such a corporation is sued in a State court it cannot remove the suit to a Federal court on the ground that it is a citizen of the other State,⁷⁹ and suit

⁷⁷ *St. Clair v. Cox*, 106 U. S. 350, 27 L. ed. 222.

⁷⁸ *Chicago & N. W. Ry. v. Whitton*, 13 Wall. 270, 20 L. ed. 571; *Pac. Ry. v. Mo. Pac. Ry.*, 23 Fed. 565; *Dean v. La Motte Lead Co.*, 59 Mo. 523; *Bernhardt v. Brown*, 119 N. C. 506, 26 S. E. 162. See, however, *Holland v. R. R.*, 16 Lea (Tenn.), 414.

⁷⁹ *Cohn v. Louisville, N. O. & T. R. R.*, 39 Fed. 227; *Paul v. Baltimore*

brought in the Federal court of one State by a citizen of that State against the corporation on ground of diverse citizenship of the parties must be dismissed, even though the cause of action arose in the other State.⁸⁰

When such a consolidated corporation is plaintiff the same reasoning does not apply. A foreigner, not being present, may bring action by agent; and an attorney bringing suit for the consolidated corporation may therefore be as well attorney for the corporation of one State as for the corporation of the other. The earlier cases appear to hold, in such a case, that all the constituent corporations were joined in the suit.⁸¹ But this is not now the accepted doctrine. It is within the power of the corporation to choose which one of its members shall bring suit; and it is therefore held that the corporation as a citizen of one State may bring suit in the Federal courts against a citizen of the other State.⁸²

There would seem to be no sound distinction in principle between corporations consolidated by the concurrent action of two States, and corporations created originally in one State and afterwards rechartered in another. But such a distinction has been made, with regard to Federal jurisdiction, by the Supreme Court of the United States. For purposes of jurisdiction a rechartered corporation is taken to be a citizen of the State which first chartered it, whether suit is brought by or against it.⁸³ The view of the court was summed up by Mr. Justice Peckham as follows: ⁸⁴

& O. & C. R. R., 44 Fed. 513; *Fitzgerald v. Mo. Pac. Ry.*, 45 Fed. 812; *Winn v. Wabash R. R.*, 118 Fed. 55.

⁸⁰ *Horne v. Boston & M. R. R.*, 18 Fed. 50; *Burger v. Grand Rapids & I. R. R.*, 22 Fed. 561.

⁸¹ *Ohio & M. R. R. v. Wheeler*, 1 Black, 286, 17 L. ed. 130; *County of Allegheny v. Cleveland & P. R. R.*, 51 Pa. 228.

⁸² *Nashua & L. R. R. Corp. v. Boston & L. R. R. Corp.*, 136 U. S. 356, 34 L. ed. 363.

⁸³ *St. Louis & S. F. Ry. v. James*, 161 U. S. 545, 40 L. ed. 802; *St. Joseph & G. I. R. R. v. Steele*, 167 U. S. 659, 42 L. ed. 315; *Louisville, N. A. & C.*

⁸⁴ *Southern Ry. v. Allison*, *supra*.

"A corporation may be made what is termed a domestic corporation, or in form a domestic corporation, of a State in compliance with the legislation thereof, by filing a copy of its charter and by-laws with the Secretary of State; yet such fact does not affect the character of the original corporation. It does not thereby become a citizen of the State in which a copy of its charter is filed, so far as to affect the jurisdiction of the Federal courts upon a question of diverse citizenship."

It will be noticed that the doctrine of these cases is carefully limited to corporations which having first come into existence as corporations of one State are afterwards rechartered in another State; and the decisions do not apply to corporations established as consolidated corporations by the simultaneous action of several States. Even so limited, the doctrine seems of questionable soundness, especially as applied to corporations defendant. It affords one more illustration of the anomalous nature of corporations chartered by two States.

§ 783. Present difficulties in dealing with consolidated corporation.

A recent case in the Circuit Court of Appeals has suggested anew the difficulty as the law now stands of dealing with the acts of such a corporation. A corporation created by the legislatures of Georgia and Alabama to engage in manufacturing in both States bought and mortgaged mills and a mill privilege lying in both States. The corporation had a common stock book, common officers, and authorized the mortgage by a single vote. The mortgage was foreclosed by an action brought in

Ry. v. Louisville Tr. Co., 174 U. S. 552, 43 L. ed. 108; *Southern Ry. v. Allison*, 190 U. S. 326, 47 L. ed. 1078 (reversing *Allison v. Southern Ry.*, 129 N. C. 336, 40 S. E. 91; *Hollingsworth v. Southern Ry.*, 86 Fed. 353; *Calvert v. Southern Ry.*, 64 S. C. 139, 41 S. E. 963; *Wilson v. Southern Ry.*, 64 S. C. 162, 41 S. E. 971. The Supreme Court of North Carolina held the other view; *Debnam v. Southern B. Tel. Co.*, 126 N. C. 831, 36 S. E. 269; *Layden v. Knights of Pythias*, 128 N. C. 546, 39 S. E. 47; *Allison v. Southern Ry.*, 129 N. C. 336, 40 S. E. 91; *Mowery v. Southern Ry.*, 129 N. C. 351, 40 S. E. 88. But the decision of the Supreme Court in *Southern Ry. v. Allison*, *supra*, has of course overruled these decisions.

the Federal court in Georgia by the trustee, a citizen of Alabama. The Alabama corporation afterwards filed in the Alabama State court a bill to redeem. The purchaser applied to the Federal court in Georgia for an injunction. It was held that the rights of the Alabama corporation had not been legally foreclosed, and that the injunction would therefore not be granted.⁸⁵

McCormick, Circuit Judge, delivering the opinion of the court, said: "It was beyond the legislative power of the State of Alabama to so combine the corporation it created with a corporation of Georgia of the same name, composed of the same individual stockholders, and operated by the same officers, that a suit in a Federal court in Georgia against the Georgia corporation by a citizen of Alabama should become a suit against the Alabama corporation, and have binding force on it as a party thereto, without ousting the jurisdiction of the court; it seems to us that, for a stronger reason, it must be beyond the power of the corporations themselves, by any system of conducting their business, to clothe themselves with such peculiar citizenship." He added, however, significantly: "How far the unity of action in the prosecution of their enterprises by the two corporations may give such force to the decrees passed against one of them as may bind the other corporation in the matters affected by those decrees is a question which goes to the merits of the controversy, and is entirely beyond our inquiry into the jurisdiction of the Circuit Court to entertain this bill."

Pardee, Circuit Judge, vigorously dissented; and his language is worth quoting. "It is contended that, because the Alabama & Georgia Manufacturing Company was incorporated in the State of Georgia and in the State of Alabama, there were two distinct and separate legal entities—twins in law and in fact. If this contention be sound, then the fact that these twins in law had the same corporators, the same

⁸⁵ Alabama & G. M. Co. v. Riverdale Cotton Mills, 127 Fed. 497.

stockholders, the same officers, the same property, and the same business requires their assimilation to the celebrated Siamese twins, so united that wherever one was the other was necessarily present, and requires the holding that whatever was the act of the one was necessarily the act of the other. And it also seems clear that, if they were two separate legal entities, in regard to the one plant and the one property and the one business, each was the full agent of the other, and each was bound by the other's transactions. Whenever a bale of cotton was bought for the cotton mills or a yard of cloth was sold from the same, whether transacted by the Alabama & Georgia Manufacturing Company of Alabama or the Alabama & Georgia Manufacturing Company of Georgia, it was complete and binding on both; and also when the board of directors of both these corporations, acting for and in the name of the Alabama & Georgia Manufacturing Company (wherever incorporated) in 1883, granted the mortgage, which was the subject of foreclosure in the main suit in this case, without specifying which particular corporation was acting, each corporation was privy thereto, and the mortgage then executed was the mortgage of both 'entities' and binding upon both 'entities.'

"It is clear to me that if the Alabama & Georgia Manufacturing Company chartered in Alabama, and the Huguley Manufacturing Company chartered in Alabama, are separate 'entities' from the corporations of the same name chartered in the State of Georgia, then they should be held to be joint tenants, privies in estate, and both fully bound by the proceedings had in the foreclosure suit."

§ 784. Statutory provisions for consolidation.

In many States are provisions for the consolidation of corporations which either expressly or by implication cover domestic corporations only.⁶⁶ But in a few States a general

⁶⁶ See for instance Conn. 1903, ch. 194, § 75; Del. Corp. Supp. § 59ff.; Ky. Stat. § 555; Md. Gen. L. Art. 23, § 39; Mo. Rev. Stat. § 1334; Nev.

statute has been passed permitting or regulating consolidation of a domestic with a foreign corporation. A common provision as to consolidation of railroad companies is as follows: "If any railroad, telegraph, telephone, express, or other corporation or company organized under any of the laws of this State, shall consolidate by sale or otherwise with any railroad, telegraph, telephone, express or other corporation organized under any of the laws of any other State or Territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction over that part of the corporate property within the limits of the State in all matters that may arise as if said consolidation had not taken place."⁸⁷

In New York is this provision:

"Any domestic stock corporation and any foreign stock corporation authorized to do business in this State lawfully owning all the stock of any other stock corporation organized for or engaged in business similar or incidental to that of the possessor corporation may file in the office of the Secretary of State, under its common seal, a certificate of such ownership, and of the resolution of its board of directors to merge such other corporation, and thereupon it shall acquire and become and be possessed of all the estate, property, rights and privileges and franchises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the board of directors of such possessor corporation, and in its name, but without prejudice to any liabilities of such other corporation or the rights of any creditors thereof."⁸⁸

And the Virginia statute is as follows: "Except [in the case

1903, ch. 121, §§ 44, 45; N. Y. Bus. Corp. L. § 8, amended 1901, ch. 520; Pa. 1901, Act No. 216; Utah Rev. Stat. § 340; Wyo. Const. Art. 10, § 8.

⁸⁷ Colo. Stat. § 609; Mo. Const. Art. 12; Mont. Civ. Code, § 524.

⁸⁸ N. Y. Stock Corp. L. § 58, amended 1902, ch. 98.

of railroads and telegraph companies] any corporation organized, or to be organized, under any law, or laws, of this State may merge or consolidate into a single corporation with any other corporation organized for the purpose of carrying on the same or a similar business under the laws of this or any other State of the United States, which said consolidated corporation shall, upon the payment of a proper charter fee, thereby become a domestic corporation of this State and be subject to its laws, and to the jurisdiction of its courts, and may be either one of said merging or consolidating corporations, or a new corporation to be formed by means of such merger or consolidation, so that by virtue of this act, and the proceedings had pursuant thereto, such corporations shall be consolidated and merged, so that all the property, rights, franchises, and privileges by law vested in such corporation so merged or consolidated shall be transferred to and vested in the corporation into which such consolidation or merger shall be made."

The directors of the corporations enter into an agreement settling the terms of the consolidation. This is submitted to a meeting, duly notified, of the stockholders of each corporation, and if accepted by a majority of the stock of each corporation a certificate to that effect shall be filed with the Secretary of the Commonwealth. A dissatisfied stockholder giving notice within three months shall be given the value of his stock the day before the vote. Upon perfecting the merger, the several corporations shall be taken to be one corporation.⁸⁹

§ 785. Statutory provisions for holding corporations.

Authority is given in a few States to hold the stock of a foreign corporation and thus control its action.

"Any corporation may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations

⁸⁹ Va. Corp. Supp. ch. 5, §§ 40-42.

of this or any other state, and while owner of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon."⁹⁰ Similar provisions may be found in New York.⁹¹

In Georgia and New York this power is restricted as follows : "The general assembly of this State shall have no power to authorize any corporation to buy shares or stock in any other corporation in this State, or elsewhere, or to make any contract or agreement whatever with any such corporation which may have the effect or be intended to have the effect to defeat or lessen competition in their respective businesses, or to encourage monopoly ; and all such contracts and agreements shall be illegal and void."⁹²

"No domestic stock corporation and no foreign corporation doing business in this State shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life."⁹³

This latter provision is common ; and that or similar provisions are in force in several of the States where consolidation with foreign corporations is permitted.⁹⁴

⁹⁰ Me. Rev. Stat. ch. 47, § 51; N. J. Corp. Supp. § 51; Pa. 1901, Act No. 298.

⁹¹ N. Y. Stock Corp. L. § 40, as amended 1902, ch. 601; *ante*, § 373.

⁹² Ga. Const. Art. 4, § 2, par. 4.

⁹³ N. Y. Stock Corp. L. § 7.

⁹⁴ Colo. Const. Art. 15, § 5; Me. Rev. Stat. ch. 47, § 53; Mo. 1899, pp. 316, 318; Mont. Const. Art. 15, § 20.

CHAPTER XXXII

RECEIVERS OF FOREIGN CORPORATIONS.

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| <p>§ 791. A receiver may be appointed for a foreign corporation.</p> <p>792. Receiver for corporation chartered in two States.</p> <p>793. Recognition of foreign receiver.</p> <p>794. Authorities forbidding suit by foreign receiver.</p> <p>795. Authorities permitting suit by foreign receiver.</p> <p>796. Competition of foreign receiver and domestic creditors.</p> <p>797. Competition of foreign receiver and foreign creditors.</p> | <p>§ 798. Competition of foreign receiver and creditors from his own State.</p> <p>799. Statutory successor may compete with creditors.</p> <p>800. Foreign receiver claiming as assignee.</p> <p>801. Foreign receiver claiming as legally entitled.</p> <p>802. Suit against foreign receiver.</p> <p>803. Remedy where receiver not allowed to sue.</p> <p>804. Administration of assets by ancillary receivers.</p> |
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§ 791. A receiver may be appointed for a foreign corporation.

While, as has been seen,¹ a court of equity will not interfere with the internal affairs of a foreign corporation, it will nevertheless in a proper case appoint a receiver for its property within the jurisdiction, who will be ancillary to a receiver already appointed in the State of charter, if such appointment has been made.² The receiver so appointed will have the

¹ Chapter XIII.

² *Williams v. Hintermeister*, 26 Fed. 889; *Failey v. Talbee*, 55 Fed. 892; *Shinney v. North American S. L. & B. Co.*, 97 Fed. 9; *Holbrook v. Ford*, 153 Ill. 633, 39 N. E. 1091; *Buswell v. Order of Iron Hall*, 161 Mass. 224, 36 N. E. 1065; *National Trust Co. v. Miller*, 33 N. J. Eq. 155; *Tinkham v. Borst*, 31 Barb. (N. Y.) 407 (but see *Day v. United States C. S. Co.*, 2 Duer [N. Y.], 608); *Murray v. Vanderbilt*, 39 Barb. (N. Y.) 140; *De Bemmer v. Drew*, 57 Barb. (N. Y.) 438; *Popper v. Supreme Council*, 61 App. Div. 405, 70 N. Y. S. 637; *Hallenborg v. Greene*, 66 App. Div. 590, 73 N. Y. S. 403; *Hall v. Holland House Co.*, 12 Misc. 55, 33 N. Y. S. 50; *Houlditch v. Donegal*,

same powers that are given to the receiver of a domestic corporation.³ A receiver may be appointed for a single fund within the State, belonging to the corporation, which is shown to be in danger.⁴ The appointment not involving suit by the corporation, the fact that the corporation has not complied with the State law before doing business will not prevent the appointment.⁵

In this as in all cases of appointment of receiver, the appointment is entirely within the discretion of the court, and may be refused;⁶ even insolvency is not necessarily cause for appointing a receiver.⁷ Thus where there were no domestic creditors, so that the principal receiver would be allowed to take the assets, the court refused to appoint an ancillary receiver, since the only effect of doing so would be to increase the expenses.⁸

The jurisdiction to appoint a receiver is *in rem*, and depends

8 Bligh (N. S.), 301; *In re Commercial Bank*, 33 Ch. D. 174; *In re English S. & A. Bank*, [1893] 3 Ch. 385; *In re Federal Bank*, W. N. [1893] 46; *In re Marshall*, 22 Rettie (Scotch Ct. Sess. 4th Ser.), 697; *In re Natal C. & D. C. Station*, 20 Natal L. R. 153; *In re Oriental Bank*, 10 Vict. L. R. (Eq.) 154. In Rhode Island under a statute it was held that a receiver could not be appointed for a foreign corporation; *Stafford v. American Mills Co.*, 13 R. I. 310; *Pierce v. Crompton*, 13 R. I. 312. But it has since been held that the statute applied to principal receivers only, and that the court under its common-law power could appoint an ancillary receiver for a foreign corporation. *Evans v. Pease*, 21 R. I. 187, 42 Atl. 506.

³ *National Trust Co. v. Miller*, 33 N. J. Eq. 155.

⁴ *Redmond v. Hoge*, 3 Hun (N. Y.), 171; *Mosher v. Order of Iron Hall*, 88 Hun, 394, 34 N. Y. S. 816; *Hallenborg v. Greene*, 66 App. Div. 590, 73 N. Y. S. 403.

⁵ *Williams v. Hintermeister*, 26 Fed. 889.

⁶ *Farmers' L. & T. Co. v. Chicago & A. R. R.*, 27 Fed. 146; *Richardson v. Clinton W. T. Co.*, 181 Mass. 580, 64 N. E. 400; *Irwin v. Granite S. P. Assoc.*, 56 N. J. Eq. 244, 38 Atl. 680; *Mabon v. Ongley Electric Co.*, 156 N. Y. 196, 50 N. E. 805; *Barclay v. Talman*, 4 Edw. (N. Y.) 123; *Hamilton v. Accessory Transit Co.*, 26 Barb. (N. Y.) 46; *Phillips v. Sonora Copper Co.*, 90 App. Div. 140, 86 N. Y. S. 200; *Borton v. Brines-Chase Co.*, 175 Pa. 209, 34 Atl. 597.

⁷ *Farmers' L. & T. Co. v. Chicago & A. R. R.*, *supra*; *Leary v. Columbia R. & P. S. Co.*, 82 Fed. 775; *Stockley v. Thomas*, 89 Md. 663, 43 Atl. 766.

⁸ *Mabon v. Ongley Electric Co.*, *supra*.

upon the power of the court to put its receiver into possession of the property; and if the property is already in the lawful control of one court, it will not be taken by another. Therefore as between the State courts and the Federal courts in the State, the court first obtaining possession of the property through its receiver will not be disturbed by the other.⁹ But though no receiver will be appointed if there are no assets, yet if an execution against a foreign corporation is returned *nulla bona*, a receiver may nevertheless be appointed, if it be shown that the corporation has fraudulently disposed of property within the State which a receiver might recover.¹⁰

§ 792. Receiver for corporation chartered in two States.

Where a corporation is chartered in two or more States, a receiver may be appointed in one of the States for the whole corporation.¹¹ But the right of such a receiver as principal receiver is not necessarily recognized in the other States. Thus Judge Woods in the Circuit Court of the United States appointed a receiver for the entire line of the Atlantic and Richmond Railway, a corporation of Georgia, South Carolina, and North Carolina, and said that the courts of the other jurisdictions ought to aid him in getting possession of the whole road; but a receiver appointed by a Georgia state court refused to turn over that part of the road in his possession, and an injunction to compel him to do so was refused.¹² In *Atkins v. Wabash, St. Louis & Pacific Railway*,¹³ the bondholders brought a bill in the United States Circuit Court for the District of Illinois to foreclose a mortgage on the part of the road in Illinois. The application was resisted on the ground

⁹ *Shields v. Coleman*, 157 U. S. 168, 39 L. ed. 660; *Merchants' & P. N. Bank v. Masonic Hall*, 63 Ga. 549.

¹⁰ *Dreyfuss v. Seale*, 55 N. Y. S. 1111, 37 App. Div. 351. See also *Bates v. International Co.*, 84 Fed. 518.

¹¹ *Ellis v. Boston, H. & E. Ry.*, 107 Mass. 1; *McElrath v. Pittsburgh & S. R. R.*, 55 Pa. 189.

¹² *Wilmer v. Atlanta & Richmond Ry.*, 2 Woods, 409, Fed. Cas. No. 17,775.

¹³ 29 Fed. 161.

that the Circuit Court for the District of Missouri had appointed receivers for the whole line, and had thereby acquired exclusive jurisdiction; but Judge Gresham granted the foreclosure.

In a recent case it was held in the Circuit Court for the Eastern District of Louisiana that a Federal court could appoint a receiver for the corporation of another State which had complied with the local law as to doing business, and that this receiver would not be merely ancillary, but would be the principal receiver.¹⁴ It seems difficult to sustain the decision on the last point, even though the corporation had voluntarily appeared in the suit, and its chief business was in that State, and it did no business at all in the State of charter.

§ 793. Recognition of foreign receiver.

The decrees of a court have *proprio vigore* no extraterritorial effect. So a receiver who owes his authority to a court of equity cannot of right demand any recognition abroad. The leading case on this point is *Booth v. Clark*.¹⁵ Booth was appointed receiver in New York of the effects of Clark after a judgment obtained by one Camara had been returned unsatisfied. As such receiver he sued in the Circuit Court for the District of Columbia for the possession of a sum of money which had been awarded to the debtor Clark. His suit was contested by the assignee in bankruptcy, Clark having been adjudged a bankrupt in New Hampshire subsequently to the appointment of Booth as receiver. Mr. Justice Wayne in delivering the opinion of the court stated the question for decision to be whether a receiver "as an officer of a court of chancery, for a particular purpose, will be recognized as such by a foreign judicial tribunal, and be allowed to take from the latter a fund belonging to a debtor, for its application to the payment of a particular creditor within the jurisdiction of the receiver's appointment, there being other creditors in the jurisdiction in which he now sues, contesting his right to do so.

¹⁴ *Lewis v. Am. Naval Stores Co.*, 119 Fed. 391.

¹⁵ 17 How. 322, 15 L. ed. 164.

Or can he as receiver claim, in virtue of a decree upon a creditor's bill given in one jurisdiction, a right to have the judgment upon which the creditor's bill was brought, paid out of a fund of a bankrupt debtor in a foreign jurisdiction, because his appointment preceded the bankrupt's petition."

In passing upon this question he says: "He has no extra-territorial power of official action; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court or another jurisdiction, as the judgment creditor himself might have done, where his debtor may be amenable to the tribunal which the creditor may seek."

Therefore if a receiver is appointed both in the State where the property is situated and also in the State of charter, the former will keep the property.¹⁶ A receiver of the State of charter may however always apply to the courts of another State in which there are assets for an ancillary appointment there, and the granting of the petition is within the discretion of the court.¹⁷

§ 794. Authorities forbidding suit by foreign receiver.

The last clause of the opinion just quoted has often been cited as authority that under no circumstances can a receiver be accorded any recognition whatever in a foreign jurisdiction. The language taken by itself might bear such a meaning; but it is to be borne in mind that the court was dealing with the demand of one creditor to have his claim satisfied in full out of a fund intended for equal distribution among all the creditors. There are, however, to be found expressions, based on a misapprehension of this

¹⁶ *Levasseur v. Mason*, [1891] 2 Q. B. 73; *Whinney v. Gardner*, 10 *Juta* (Cape Col.), 333; *In re New Zealand Mid. Ry.*, 19 *New Zealand*, 227.

¹⁷ *In re Free State Colliery Co.*, 12 *Cape L. J.* 309 (Orange Free State); *In re New Zealand Mid. Ry.*, *supra*.

opinion, to the effect that a foreign receiver cannot under any circumstances be recognized;¹⁸ and the same has been held with reference to the trustee of a foreign corporation appointed by a court of the State of charter;¹⁹ and a receiver appointed by a Federal court in Wisconsin was even refused recognition in a Federal court in New York, on the ground that he was a foreign receiver.²⁰

It is to be noted that a receiver appointed under the general equity powers of the court "merely as its hand to assist it in realizing rights of action which vested, not in the receiver, but in the creditors,"²¹ which was the case in *Booth v. Clark*, differs from a receiver often appointed under a statute, who takes title as assignee. In several jurisdictions a receiver who has no legal interest in the property cannot proceed in his own name in a foreign State.²²

§ 795. Authorities permitting suit by foreign receiver.

In spite of these authorities, it is generally held that if no domestic creditor, or one as favorably regarded, is prejudiced thereby a foreign receiver as such will be given a standing in court. Usually no distinction appears to be made between different kinds of receivers; but in States where such a distinction is made, the receiver who has title will be given this

¹⁸ *Hazard v. Durant*, 19 Fed. 471; *Day v. Postal Tel. Co.*, 66 Md. 354; *Farmers' & M. Ins. Co. v. Needles*, 52 Mo. 17; *Hope Mut. L. Ins. Co. v. Taylor*, 2 Rob. (N. Y.) 278; *Warren v. Union Nat. Bk.*, 7 Phila. (Pa.) 156; *Commercial Nat. Bk. v. Matherwell Iron, etc., Co.*, 95 Tenn. 172, 31 S. W. 1002; *Moreau v. Du Bellet*, (Tex. Civ. App.) 27 S. W. 503; *Sparks v. Estabrooks*, 72 Vt. 101, 47 Atl. 394; *Filkins v. Nunnemacher*, 81 Wis. 91, 51 N. W. 79.

¹⁹ *Ayres v. Seibel*, 82 Iowa, 347, 47 N. W. 989 (but see *Wyman v. Eaton*, 107 Ia. 214, 77 N. W. 865).

²⁰ *Brigham v. Luddington*, 12 Blatch. 237, Fed. Cas. No. 1874. See *Olney v. Tanner*, 10 Fed. 101. *Contra*, *Peters v. Foster*, 56 Hun, 607, 10 N. Y. S. 339.

²¹ *Hale v. Tyler*, 104 Fed. 757.

²² *Hazard v. Durant*, 19 Fed. 471; *Hale v. Hardon*, 95 Fed. 747; *Hilliker v. Hale*, 117 Fed. 220; *Wigton v. Bosler*, 102 Fed. 70; *Hale v. Tyler*, 104 Fed. 757; *Hayward v. Leeson*, 176 Mass. 310, 57 N. E. 656. See *Hale v. Allinson*, 188 U. S. 56, 47 L. ed. 380.

privilege.²³ So a foreign receiver may sue to have a fraudulent conveyance of land set aside,²⁴ and to recover possession of property fraudulently or feloniously removed from the State.²⁵ So a foreign receiver may prove in bankruptcy;²⁶ and in a State where the assignee of a chose in action sues in his own name, the assignee of a foreign receiver may sue.²⁷

So in Ohio a foreign receiver appointed at the request of the trustees under a mortgage was allowed to sue for property temporarily in Ohio and covered by the mortgage.²⁸ The aid of the court will be extended to a foreign receiver seeking to obtain possession of the property fraudulently withheld by the officers of the corporation.²⁹ So if the receiver has taken possession of the property of the corporation and in the discharge of his duties takes it into another State,

²³ *Rogers v. Riley*, 80 Fed. 759; *Kirtley v. Holmes*, 107 Fed. 1; *Lewis v. Amer. Naval Stores Co.*, 119 Fed. 391; *Boulware v. Davis*, 90 Ala. 207, 8 So. 84, 9 L. R. A. 601; *Patterson v. Lynde*, 112 Ill. 196; *Higbee v. Peed*, 98 Ind. 420; *Metzner v. Bauer*, 98 Ind. 425; *Wyman v. Eaton*, 107 Ia. 214, 77 N. W. 865 (*semble*); *Winans v. Gibbs & S. M. Co.*, 48 Kan. 777, 30 Pac. 163; *Johnston v. Rogers*, 19 Ky. L. Rep. 1272, 43 S. W. 234; *McAlpin v. Jones*, 10 La. Ann. 552; *Castleman v. Templeman*, 87 Md. 546, 40 Atl. 275; *Howarth v. Lombard*, 175 Mass. 570, 56 N. E. 888; *Comstock v. Frederickson*, 51 Minn. 350, 53 N. W. 713; *Glaser v. Priest*, 29 Mo. App. 1; *Bidlack v. Mason*, 26 N. J. Eq. 230; *National Trust Co. v. Miller*, 33 N. J. Eq. 155; *Sobernheimer v. Wheeler*, 45 N. J. Eq. 614, 18 Atl. 234; *Hurd v. Elizabeth*, 41 N. J. L. 1; *Willitts v. Waite*, 25 N. Y. 577; *Howarth v. Angle*, 162 N. Y. 179, 56 N. E. 489; *Runk v. St. John*, 29 Barb. (N. Y.) 585; *Merchants' Nat. Bank v. McLeod*, 38 Oh. St. 174; *Lycoming Ins. Co. v. Wright*, 55 Vt. 526; *Swing v. Bentley & G. F. Co.*, 45 W. Va. 283, 31 S. E. 925; *Swing v. Parkersburg, V. & P. Co.*, 45 W. Va. 288, 31 S. E. 926. See *Hoyt v. Thompson*, 5 N. Y. 320; *Kirwan Mfg. Co. v. Truxton*, 1 Penn. (Del.) 409, 44 Atl. 427. On this ground a foreign receiver was not allowed to bring suit against the corporation for the appointment of an ancillary receiver; since such appointment was unnecessary. *Mabon v. Ongley Elec. Co.*, 156 N. Y. 196, 50 N. E. 805.

²⁴ *Runk v. St. John*, 29 Barb. (N. Y.) 585.

²⁵ *McAlpin v. Jones*, 10 La. Ann. 552; see also *Bates v. International Co.*, 84 Fed. 518.

²⁶ *Ex parte Norwood*, 3 Biss. 504, Fed. Cas. No. 10,364.

²⁷ *Hoyt v. Thompson*, 5 N. Y. 320.

²⁸ *Bank v. McLeod*, 38 Oh. St. 174.

²⁹ *Bidlack v. Mason*, 26 N. J. Eq. 230.

the courts of that State will assist him in retaining it as against an attaching creditor of the corporation.³⁰

If a foreign receiver is allowed to sue he must of course prove his right, including the jurisdiction of the court which assumed to appoint him.³¹

§ 796. Competition of foreign receiver and domestic creditors.

It is almost everywhere held that a foreign receiver or assignee will not be allowed to claim the assets in competition with a domestic creditor; and this is equally true whether the domestic creditor has attached the property before the appointment of the receiver or not.³² A foreign corporation which is in the hands of a receiver in the State of charter may be garnisheed by a domestic creditor.³³ This is in accordance with the well-settled general rule as to foreign assignments by operation of law.³⁴

§ 797. Competition of foreign receiver and foreign creditors.

By the prevailing doctrine, even a foreign creditor who claims that the property of the insolvent corporation should be applied to the payment of his debt will prevail over a foreign receiver,

³⁰ *Chicago, M. & S. P. Ry. v. Packet Co.*, 108 Ill. 317.

³¹ *Kronberg v. Elder*, 18 Kan. 150.

³² *Sands v. E. S. Greeley & Co.*, 83 Fed. 772; *Zacher v. Fidelity T. & S. V. Co.*, 109 Ky. 441, 22 Ky. L. Rep. 987, 59 S. W. 493; *Hunt v. Columbian Ins. Co.*, 55 Me. 290; *Day v. Postal Tel. Co.*, 66 Md. 354; *Taylor v. Columbian Ins. Co.*, 14 All. (Mass.) 353; *Willetts v. Waite*, 25 N. Y. 577; *Dunlop v. Paterson F. I. Co.*, 12 Hun (N. Y.), 627 (aff. 74 N. Y. 145); *Vogt v. Covenant B. & L. Assoc.*, 21 Pa. Co. Ct. 351; *New Zealand L. & M. A. Co. v. Morrison*, [1898] A. C. 349. See *Tinkham v. Borst*, 31 Barb. (N. Y.) 407. In *Falk v. Janes*, 49 N. J. Eq. 484, 23 Atl. 813, a foreign receiver appointed at the suit of a New Jersey creditor, who alone was interested, was allowed to sue even against the interest of another domestic creditor.

³³ *Taylor v. Columbian Ins. Co.*, *supra*; *Vogt v. Covenant B. & L. Assoc.*, *supra*. See *Osgood v. Maguire*, 61 N. Y. 524, where the State of charter refused to recognize such proceedings; but in that case the debt was secured by promissory note, which was in the hands of the corporation; and it was held that a court of another State could not discharge the note.

³⁴ *Security Trust Co. v. Dodd, Mead & Co.*, 173 U. S. 624, 43 L. ed. 835; *Barth v. Backus*, 140 N. Y. 230, 35 N. E. 425.

whether such creditor secured a prior lien by attachment,³⁵ or made his claim subsequently to that of the receiver.³⁶ An occasional authority held otherwise in the latter case;³⁷ but the Supreme Court of the United States having held it unconstitutional to distinguish between domestic creditors and those of other States, (though not between domestic creditors and foreign corporations or domestic creditors and those of other countries),³⁸ it must be taken that individual creditors of other States will everywhere be protected against a foreign receiver.

§ 798. Competition of foreign receiver and creditors from his own State.

A creditor domiciled in the State where the receivership is granted has however no right to compete with the receiver, even in a foreign State; and a foreign receiver will therefore always be given the preference over an attaching creditor from his own State.³⁹ So, it would seem that the receiver would be given preference over the corporation itself if the latter attempted to maintain suit abroad after the appointment of the receiver in the charter State.⁴⁰ The contrary view was to be sure taken by the Supreme Court of Illinois, where a creditor

³⁵ *Schindelholz v. Cullum*, 55 Fed. 885; *Ward v. Conn. Pipe Mfg. Co.*, 71 Conn. 345, 41 Atl. 1057; *Rhawn v. Pearce*, 110 Ill. 350; *Lichtenstein v. Gillett*, 37 La. Ann. 522; *Bartlett v. Wilbur*, 53 Md. 485, 496; *Kruger v. Bank of Commerce*, 123 N. C. 16, 31 S. E. 270; *Warren v. Union Nat. Bank*, 7 Phila. (Pa.) 156; *Moseby v. Burrow*, 52 Tex. 396. And see *Chipman v. Mfg. Nat. Bank*, 156 Mass. 147, 30 N. E. 610; *Jenks v. Ludden*, 34 Minn. 482. In *Long v. Girdwood*, 150 Pa. 413, 24 Atl. 711, the court held otherwise on the mistaken analogy of cases involving the effect not of an assignment by operation of law but of a voluntary assignment.

³⁶ *Catlin v. Wilcox Silver Plate Co.*, 123 Ind. 477, 24 N. E. 250, 18 A. S. R. 338, 8 L. R. A. 62; *Linville v. Hadden*, 88 Md. 594, 41 Atl. 1097; *John Ray Clark Co. v. Toby V. S. Co.*, 14 Pa. Co. Ct. 344.

³⁷ *Sands v. E. S. Greeley & Co.*, 80 Fed. 195.

³⁸ *Blake v. McClung*, 172 U. S. 239, 43 L. ed. 432.

³⁹ *Schindelholz v. Cullum*, 55 Fed. 885; *Bagby v. Atlantic, M. & O. R. R.*, 86 Pa. 291; *Gilman v. Ketcham*, 84 Wis. 60, 54 N. W. 395. See *Faulkner v. Hyman*, 142 Mass. 53.

⁴⁰ *Kerwan Mfg. Co. v. Truxson*, 1 Pen. (Del.) 409, 44 Atl. 427.

of a Rhode Island corporation, himself a citizen of Rhode Island, was allowed to maintain an attachment of real estate in Illinois against the Rhode Island receiver, on the ground that the decree of the court in Rhode Island could not pass title to land in Illinois.⁴¹ And in the Supreme Court of Tennessee, it was held that a judgment confessed by an Ohio corporation in favor of an Ohio creditor after petition filed for the dissolution of the corporation, which judgment by Ohio law was void as against the receiver, could be enforced in a suit against such corporation in Tennessee.⁴² The court had in an earlier part of the opinion denied the foreign receiver any power to sue, pushing to an extreme the case of *Booth v. Clark*. But these cases are opposed to the great weight of authority.

It would also seem clear that, since a stockholder is bound in all his relations with the corporation, by the laws of the State of charter, a domestic creditor who is a stockholder of a foreign corporation cannot reach the property in competition with a receiver appointed in the State of charter; and it has been so held.⁴³

The reason for this preference of the receiver appears to be that the creditor has been enjoined in the course of the receivership proceedings, and being subject to the jurisdiction of the court he is bound by the injunction. If he persists in claiming a remedy abroad, he may be punished for contempt by his own court.⁴⁴ If however no injunction has been issued he may freely compete with the receiver.

"The receiver is not put in possession of foreign property by

⁴¹ *City Ins. Co. v. Commercial Bank*, 68 Ill. 348. *Acc. Henry v. Stuart*, 14 Phila. (Pa.) 110, on the ground that the statute under which the proceedings were instituted in the foreign State had no application in Pennsylvania.

⁴² *Com. Nat. Bank v. Matherwell Iron, etc., Co.*, 95 Tenn. 172, 31 S. W. 1002.

⁴³ *Hintermeister v. Ithaca, O. & P. Co.*, 1 Pa. Co. Ct. 466; *McKean v. New York N. B. & L. Assoc.*, 10 Pa. Dist. Rep. 197.

⁴⁴ *Sercomb v. Catlin*, 128 Ill. 556, 21 N. E. 606, 15 A. S. R. 147.

the mere order of the court. Something else has to be done, and until that has been done in accordance with the foreign law, any person, not a party to the suit, who takes proceedings in the foreign country is not guilty of a contempt either on the ground of interfering with the receiver's possession or otherwise. For this purpose no distinction can be drawn between a foreigner and a British subject. . . . It cannot be reasonable that I should deprive English creditors of a right against French assets which French creditors undoubtedly enjoy." ⁴⁵

§ 799. Statutory successor may compete with creditors.

Though a foreign receiver will not be admitted to compete with domestic creditors, an official of the State of incorporation who by the charter is designated as successor of the corporation upon dissolution will, it is held, succeed to the assets wherever situated, and may hold them against all the world. In *Relfe v. Rundle* ⁴⁶ a statute of Missouri provided that on a decree of dissolution of an insolvent life insurance company the entire property should vest absolutely and in fee simple in the superintendent of the insurance department of the State. After such a decree, the superintendent was admitted as a party in a suit brought in Louisiana to have the property in Louisiana declared a trust fund for the exclusive benefit of Louisiana creditors. The only point decided in the case was that being admitted as a party he had a right by virtue of his Missouri citizenship to remove to a Federal court. The decision itself is unquestionably sound; but the language of the opinion is very broad: "Relfe is not an officer of the Missouri state court, but the person designated by law to take the property of any dissolved life insurance corporation of that state, and hold and dispose of it in trust for the use and benefit of creditors, and other parties interested. . . . He was, in fact, the corporation itself for all the purposes of wind-

⁴⁵ *Cozens-Hardy, J.*, in *In re Mandaley Sons & Field*, [1900] 1 Ch. 602, 611.

⁴⁶ 103 U. S. 222, 26 L. ed. 337.

ing up its affairs." "No state need allow the corporations of other states to do business within its jurisdiction unless it chooses; but if it does, without limitation, express or implied, the corporation comes in as it has been created. Every corporation necessarily carries its charter wherever it goes, for that is the law of its existence. It may be restricted in the use of some of its powers while doing business away from its corporate home, but every person who deals with it everywhere is bound to take notice of the provisions which have been made in its charter for the management and control of its affairs both in life and after dissolution." This opinion was followed in Virginia in the case of the same company.⁴⁷

Upon the authority of the same case it was ruled in the United States Circuit Court in Iowa that the assets in Iowa of an insolvent Connecticut corporation passed to the receiver appointed by the Connecticut court in accordance with a general statute of Connecticut, and that the receiver appointed by the State court in Iowa for the benefit of creditors in that State had no claim.⁴⁸ But in a very similar case in New York the contrary has been held. The charter provided that the property of the corporation should vest in a receiver in case of its insolvency, and a receiver had been appointed in the court of the State of charter. This receiver was however not allowed to obtain the New York assets in competition with the creditors of that State.⁴⁹

§ 800. Foreign receiver claiming as assignee.

If the corporation makes a voluntary assignment to the receiver, the assignment passes a title which should prevail against any subsequent attachment, with notice of the assignment, by any creditor, domestic or foreign.⁵⁰ And so a foreign

⁴⁷ Bockover v. Life Assoc. of America, 77 Va. 85.

⁴⁸ Parsons v. Charter Oak Life Ins. Co., 31 Fed. 305.

⁴⁹ Willitts v. Waite, 25 N. Y. 577.

⁵⁰ Ward v. Conn. Pipe Mfg. Co., 71 Conn. 345, 41 Atl. 1057; Graydon v. Church, 7 Mich. 36; Parker v. Stoughton Mill Co., 91 Wis. 174, 64 N. W. 751.

receiver to whom a mortgage has been assigned may foreclose as such assignee.⁵¹

§ 801. Foreign receiver claiming as legally entitled.

If the obligation is really due to the receiver personally and not to the corporation the receiver will be allowed to sue to enforce it. Thus in *Cooke v. Town of Orange*,⁵² the plaintiff was the receiver of a New Jersey corporation which had an unfulfilled contract with defendant. This contract, in accordance with an understanding with the town the receiver performed. In an action for the contract price the court held that he was entitled to recover, and that a prior judgment by the town in favor of the attaching creditor of the corporation was no defense. So a mortgage executed to secure a debt to a foreign bank after its insolvency may be foreclosed by a foreign receiver.⁵³ So where the receiver of a foreign corporation himself bought material to finish work on which the corporation was engaged, and brought these materials into Connecticut, creditors of the corporation, even though domiciled in Connecticut, could not attach such property there, as it was the individual property of the receiver.⁵⁴

Upon the same principle where a receiver sues and obtains judgment, he may sue on the judgment in any State, even in competition with a creditor of that State. He sues not as receiver, but as judgment creditor.⁵⁵

⁵¹ *Hale v. Harris*, 112 Ia. 372, 83 N. W. 1046.

⁵² *Cooke v. Orange*, 48 Conn. 401; *acc.* *Blake Crusher Co. v. New Haven*, 46 Conn. 473. *A fortiori* he may sue in a similar case where he made the contract himself. *Merchants' Nat. Bank v. Pa. Steel Co.*, 57 N. J. L. 336, 30 Atl. 545.

⁵³ *Inglehart v. Bierce*, 36 Ill. 133.

⁵⁴ *Pond v. Cooke*, 45 Conn. 126. See also *Merchants Nat. Bank v. Pa. Steel Co.*, 57 N. J. L. 336, 30 Atl. 545.

⁵⁵ *Wilkinson v. Culver*, 25 Fed. 639. The court said: "The action is on the judgment. He is not required to prove his title as receiver; that was done in the action in New Jersey upon the note. It was necessary there, in order to obtain the judgment, but having obtained it, the plaintiff, as an individual, can maintain the present suit."

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And whenever a receiver gets actual possession of assets by order of court, the possession will not be divested in another jurisdiction.⁵⁶

§ 802. Suit against foreign receiver.

A receiver can generally be sued only by order of the court; and to bring suit against him without such permission is contempt of court. But in a foreign jurisdiction a receiver who has come under a liability by reason of an act there done may be sued like any individual.⁵⁷

§ 803. Remedy where receiver not allowed to sue.

If a receiver is not allowed to sue in a foreign State, he may have an ancillary receiver appointed,⁵⁸ or the corporation may sue in its own name.⁵⁹ If however the officers of the corporation have in their own State been enjoined from bringing suit for the corporation, it would seem that they should not be recognized elsewhere as having authority to bring suit for the corporation,⁶⁰ and in that case it would seem that the receiver might bring suit in the name of the corporation. And when not prevented by the competition of creditors he is in fact permitted so to sue; his position, as that of one as

⁵⁶ *Chicago, M. & S. P. Ry. v. Keokuk N. L. P. Co.*, 108 Ill. 317; *Robertson v. Staed*, 135 Mo. 135, 36 S. W. 610; *Osgood v. Maguire*, 61 N. Y. 524; *Cagill v. Wooldridge*, 8 Baxt. (Tenn.) 580. *Contra*, *Humphreys v. Hopkins*, 81 Cal. 551, 22 Pac. 892, 15 A. S. R. 76.

⁵⁷ *Phelan v. Ganabin*, 5 Colo. 14; *Paige v. Smith*, 99 Mass. 395; *Kain v. Smith*, 80 N. Y. 458; *Hill v. Baltimore & O. R. R.*, 7 Pa. Dist. R. 473.

⁵⁸ See § 791.

⁵⁹ *Hayward v. Leeson*, 176 Mass. 310, 57 N. E. 656 (*semble*).

⁶⁰ *Rust v. United Waterworks Co.*, 70 Fed. 129.

entitled to manage the affairs of the corporation, being to that extent recognized.⁶¹

§ 804. Administration of assets by ancillary receiver.

The ancillary receiver has power to take only such property as is within the jurisdiction of the court that appointed him.⁶² He may, however, like any receiver, do acts in connection with the estate outside the jurisdiction, and in so acting is still within the control of the court which appointed him.⁶³

When the assets have all been collected, the creditors within the jurisdiction, at least, may be paid the proper proportionate part of their debts.⁶⁴ Or in its discretion the court may order the assets transmitted to the principal receiver, to be administered along with the principal estate; but this will not be done until the court is sure that the creditors within its jurisdiction will share proportionately with all other creditors.⁶⁵

⁶¹ *Lycoming F. I. Co. v. Langley*, 62 Md. 196; *Hope M. L. I. Co. v. Taylor*, 2 Robt. (N. Y.) 278; *Yeager v. Wallace*, 44 Pa. 294.

⁶² *Reynolds v. Stockton*, 140 U. S. 254, 35 L. ed. 464; *Holbrook v. Ford*, 153 Ill. 633, 39 N. E. 1091.

⁶³ *Guarantee T. & S. D. Co. v. Philadelphia, R. & N. E. R. R.*, 69 Conn. 709, 38 Atl. 792.

⁶⁴ *Fawcett v. Order of Iron Hall*, 64 Conn. 170, 29 Atl. 614; *Failley v. Fee*, 83 Md. 83, 34 Atl. 839. In the Southern District of New York the Federal courts pay resident creditors in full, or to the extent of the assets. *Sands v. E. S. Greeley & Co.*, 83 Fed. 772.

⁶⁵ *Buswell v. Order of Iron Hall*, 161 Mass. 224, 36 N. E. 1065; *Baldwin v. Hosmer*, 101 Mich. 119, 59 N. W. 432; *People v. Granite State Provident Ass.*, 161 N. Y. 492, 55 N. E. 1053.

CHAPTER XXXIII

THE INSOLVENCY OF A FOREIGN CORPORATION.

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| § 811. Assignments for benefit of creditors. | § 814. Preferring domestic creditors. |
| 812. Assignments by authority of statute. | 815. Fund to secure domestic creditors. |
| 813. Member of corporation bound by law of State of charter. | 816. Marshalling assets. |

§ 811. Assignments for benefit of creditors.

If an assignment for the benefit of creditors which is valid at common law is made by a corporation, it will be given full effect in every State where there are assets, provided it is not against the law or policy of such State.¹ If however the local law forbids such an assignment, it will be invalid, though upheld by the law of the State of charter as to all tangible property within the jurisdiction.² A chose in action, having

¹ *Barnett v. Kinney*, 147 U. S. 476, 37 L. ed. 247; *J. M. Atherton Co. v. Ives*, 20 Fed. 894; *Schroder v. Tompkins*, 58 Fed. 672; *Campbell v. Colorado C. & I. Co.*, 9 Colo. 60, 10 Pac. 248; *First Nat. Bank v. Walker*, 61 Conn. 154, 23 Atl. 696; *Walters v. Whitlock*, 9 Fla. 86; *Princeton Mfg. Co. v. White*, 68 Ga. 96; *Coffin v. Kelling*, 83 Ky. 649; *May v. Wannemacher*, 111 Mass. 202; *In re Paige & Sexsmith Lumber Co.*, 31 Minn. 136, 16 N. W. 700; *Toof v. Miller*, 73 Miss. 756, 19 So. 577; *Askew v. La Cygne Bank*, 83 Mo. 366; *Frazier v. Fredericks*, 24 N. J. L. 162; *Ockerman v. Cross*, 54 N. Y. 29; *Johnson v. Sharp*, 31 Oh. St. 611; *Smith's Appeal*, 104 Pa. 381; *Noble v. Smith*, 6 R. I. 446; *Weider v. Maddox*, 66 Tex. 372, 1 S. W. 168; *Gregg v. Sloan*, 76 Va. 497; *Harrison v. Farmers' Bank*, 9 W. Va. 424; *Cook v. Van Horn*, 81 Wis. 291, 50 N. W. 893.

² *Richmondville Mfg. Co. v. Prall*, 9 Conn. 487; *King v. Johnson*, 5 Harr. (Del.) 31; *Kansas City Packing Co. v. Hoover*, 1 Dist. Col. App. 268; *Stricker v. Tinkham*, 35 Ga. 176; *Woolson v. Pipher*, 100 Ind. 306; *Franzen v. Hutchinson*, 94 Ia. 95; 62 N. W. 690; *Pierce v. O'Brien*, 129 Mass. 314; *In re Dalpay*, 41 Minn. 532, 43 N. W. 564; *Brown v. Knox*, 6 Mo. 302;

no actual *situs*, is effectually assigned and will be so recognized in every jurisdiction, when it is validly assigned by the law of the State of charter.³

§ 812. Assignments by authority of statute.

An assignment made by the courts of a State or otherwise by virtue of statutory authority will not generally be recognized in another State; and this is true even though the assignment is made in the charter State.⁴ As to the distinction between a voluntary and a statutory assignment, the best view is that any State law upon the subject of assignments, which limits the distribution of the debtor's property to such of his creditors as shall file releases of their demands, is to all intents and purposes an insolvent law; and that a title to personal property acquired under such laws will not be recognized in another State, when it comes in conflict with the rights of creditors pursuing their remedy there against the property of the debtor, though the proceedings were instituted subsequent to and with notice of the assignment in insolvency.⁵

Varnum v. Camp, 13 N. J. L. 326; Guillander v. Howell, 35 N. Y. 657; Rice v. Courtis, 32 Vt. 460. But see Livermore v. Jenckes, 21 How. 126, 16 L. ed. 55; Speed v. May, 17 Pa. 91; Crampton v. Valido Marble Co., 60 Vt. 291.

³ Caskie v. Webster, 2 Wall. Jr. 131, Fed. Cas. No. 2500; Egbert v. Baker, 58 Conn. 319, 20 Atl. 466; Birdseye v. Underhill, 82 Ga. 142, 7 S. E. 863; *In re Dalpay*, 41 Minn. 532, 43 N. W. 564; Guillander v. Howell, 35 N. Y. 657 (*semble*). *Contra*, Kimball v. Plant, 14 La. 10; Zipcey v. Thompson, 1 Gray (Mass.), 243; Martin v. Potter, 34 Vt. 87.

⁴ Security Trust Co. v. Dodd, Mead & Co., 173 U. S. 624, 43 L. ed. 835; Paine v. Lester, 44 Conn. 196, 26 A. R. 442; Rhawn v. Pearce, 110 Ill. 350; Johnson v. Parker, 4 Bush (Ky.), 149 (*semble*); Metcalf v. Yeaton, 51 Me. 198; Taylor v. Columbian Ins. Co., 14 All. (Mass.) 353; Wood v. Parsons 27 Mich. 159; Beer v. Hooper, 32 Miss. 246; Hoyt v. Thompson, 19 N. Y. 207; Bizzel v. Bedient, 2 Car. L. Rep. (N. Car.) 254; Milne v. Moreton, 6 Binn. (Pa.) 353; Goodsell v. Benson, 13 R. I. 225 (*semble*); McClure v. Campbell, 71 Wis. 350, 37 N. W. 343. *Contra*, Long v. Girdwood, 150 Pa. 413, 24 Atl. 711.

⁵ Brown, J., in Security Trust Co. v. Dodd, Mead & Co., *supra*. To the same effect, Townsend v. Cox, 151 Ill. 62, 37 N. E. 689; Franzen v. Hutchinson, 94 Ia. 95, 62 N. W. 698; Barth v. Backus, 140 N. Y. 230, 35 N. E. 425. *Contra*, Whitman v. Mast, Buford & Burwell Co., 11 Wash. 318, 39 Pac. 649.

But though a statutory foreign assignment will not generally be recognized in another State, yet even the foreign assignee under a statutory assignment (as for instance a foreign assignee in bankruptcy) will be given the assets if there are no competing creditors, that is, if the question is simply between the bankrupt and his assignee.⁶

§ 813. Member of corporation bound by law of State of charter.

When a corporation becomes insolvent, its members everywhere, though they may be creditors also, are bound to abide by the method of distributing the assets adopted in the State of charter.⁷ They cannot object to the assets being sent for final distribution to the State of charter,⁸ nor can they attach the assets in any State as against the assignee appointed in the State of charter.⁹ "The charter of the company, and the 'winding-up act' of the state of Connecticut, which must determine the rights of policy-holders as between themselves, and as between themselves and the company, did not contemplate that there should be a mere 'race of diligence,' as between policy-holders, in the event of insolvency. When plaintiff became a member of the company he assented to that form of supervision which the state of Connecticut undertook to exercise for the benefit of policy-holders over the affairs of the company while it was a going concern, and impliedly agreed that there should be a valuation of all policy obligations according to a certain standard, and an equitable distribution of the company's assets in the event of insolvency. . . .

"If the present attachment had been sued out and levied in the state of Connecticut after the commencement of the pro-

⁶ *In re Waite*, 99 N. Y. 433.

⁷ *Hawkins v. Glenn*, 131 U. S. 319, 331, 33 L. ed. 184; *Bank Comrs. v. Granite State Prov. Assoc.*, 70 N. H. 557, 49 Atl. 124; but see *Fawcett v. Order of Iron Hall*, 64 Conn. 170, 29 Atl. 614.

⁸ *Davis v. Life Assoc. of America*, 11 Fed. 781.

⁹ *Fry v. Charter Oak L. I. Co.*, 31 Fed. 197.

ceeding to wind up the company, and *prior* to the appointment of any receiver, the right acquired by the state as against corporate property, by filing its bill, would have prevailed over that of the attaching creditor. Such would clearly be the case with respect to property situated in the state of Connecticut; and, in my opinion, the commencement of the proceeding in the home state should have the same effect with respect to property located in the state of Missouri, as against this plaintiff, who is himself a member of the company, and, under the terms of its charter, is only entitled to an equitable proportion of its assets in the event of insolvency. If he was a general creditor, and not a member of the corporation, the rule might be different." ¹⁰

§ 814. Preferring domestic creditors.

In a few States an attempt has been made, either by statute or by judicial decision, to obtain a preference for domestic creditors in the administration of the assets of a foreign insolvent.¹¹ But this preference was held unconstitutional by the Supreme Court of the United States as against individual creditors from other States.¹² Foreign individuals and foreign corporations (even those chartered in another State) are not entitled to the constitutional protection, and as against them, therefore, a State may give the preference to its own creditors.

In working out the administration of the assets of an insolvent corporation under its statute, a majority of the Supreme Court of Tennessee held that the requirements of the constitution were satisfied if the creditors from other States received the proportional part of the assets to which they

¹⁰ Thayer, J., in *Fry v. Charter Oak L. I. Co.*, *supra*.

¹¹ *Sheldon v. Wheeler*, 32 Fed. 773; *Heyer v. Alexander*, 108 Ill. 385; *Consolidated T. L. Co. v. Collier*, 148 Ill. 259, 35 N. E. 756; *Smith v. Lamson*, 184 Ill. 71, 56 N. E. 387; *Chafee v. Fourth Nat. Bank*, 71 Me. 514 (*semble*); *Smith v. St. Louis M. L. I. Co.*, 6 Lea (Tenn.), 564; *Liebold v. Marony*, 7 Lea (Tenn.), 128.

¹² *Blake v. McClung*, 172 U. S. 239, 43 L. ed. 432. Followed, *Maynard v. Granite State Provident Assoc.*, 92 Fed. 435.

would be entitled if there were no statute; and they having been satisfied, the statute might be applied and a preference given to domestic creditors in the remaining assets: the constitution not requiring that creditors from other States shall share in a preference dependent on the very statute which is as to such creditors unconstitutional.¹³

In most jurisdictions, entirely apart from the constitution, it is either held by the courts or provided by statute that foreign creditors are entitled to share equally with domestic.¹⁴

§ 815. Fund to secure domestic creditors.

A State may, however, under the constitution require of a corporation, as a condition of its entering the State to do business, the deposit of a fund as security for domestic creditors; and the fund so deposited may in the event of insolvency of the corporation be applied to the payment of domestic creditors to the exclusion of foreign creditors.¹⁵

If such fund is claimed by the assignee or receiver of the foreign corporation appointed in the State of charter, it will not usually be sent out of the State to the State of charter, but will be distributed by the courts to the creditors entitled to it.¹⁶ "There is no injustice in devoting the fund to the very purpose for which it was created and sent here. The corporation could have declined to enter the State upon such conditions, but having accepted them by making the deposit, no creditor or shareholder in any other State can complain be-

¹³ McClung v. Embreeville F. L. I. & Ry. Co., 103 Tenn. 399, 52 S. W. 1001.

¹⁴ Taylor v. Life Assoc. of America, 13 Fed. 493; People v. Granite State Provident Assoc., 161 N. Y. 492, 55 N. E. 1053; Wilson v. Keels, 54 S. C. 545, 32 S. E. 702 (S. Car. Civ. Code, § 1789); *In re Oriental Bank*, 10 Vict. L. R. (Eq.) 154. See Brittle Silver Co. v. Rust, 10 Colo. App. 463, 51 Pac. 526.

¹⁵ Blake v. McClung, *supra* (semble); Maynard v. Granite State Provident Assoc., 92 Fed. 435 (semble); Lewis v. American S. & L. Assoc., 98 Wis. 203, 73 N. W. 793.

¹⁶ Kelsey v. Republic S. & L. Assoc., 110 Fed. 40; Fawcett v. Order of Iron Hall, 64 Conn. 170, 29 Atl. 614; People v. Granite State Provident Assoc., 161 N. Y. 492, 55 N. E. 1053.

cause the courts of this State have, with the consent of the corporation, devoted the fund in the first instance to the payment of home creditors and shareholders. The defendant virtually consented, when it made the deposit, that it should be distributed in this manner in case of insolvency." ¹⁷ "As against the demand of a foreign receiver and assignee, we think the members of each branch, whose contributions created its reserve fund, have, under the conditions disclosed in the record of this cause, an equitable lien upon it, which the courts of their own State can best protect." ¹⁸

§ 816. Marshalling assets.

When creditors have obtained partial payment from the assets in other States, the assets will so be marshalled in the final distribution in the State of charter as to put the creditors as nearly as possible on an equality; and a creditor who has obtained partial payment will be obliged to surrender such preference before participating with other creditors on equal terms.¹⁹

In a recent case in New Hampshire this matter was elaborately discussed. Two classes of creditors had received partial payments abroad. The first class consisted of creditors for whose security funds had been deposited in another State. They were treated like domestic secured creditors, and entitled to prove only the balance still due. The second class consisted of unsecured creditors who had obtained partial payment from ancillary receivers in other States. The court held that before proving in New Hampshire, the State of charter, they must surrender the entire preference received in any other State. "Each shareholder, whether domestic or foreign, is entitled to receive the same percentage upon his claim as every other shareholder receives. Such a division could be more conveniently made if all ancillary re-

¹⁷ O'Brien, J., in *People v. Granite State Provident Assoc.*, *supra*.

¹⁸ Baldwin, J., in *Fawcett v. Order of Iron Hall*, *supra*.

¹⁹ *Ward v. Connecticut Pipe Mfg. Co.*, 71 Conn. 345, 41 Atl. 1057.

ceivers would transfer their funds to the assignee. It would be a simple problem to determine what percentage the single fund thus formed would be of the amount of all the claims, and to distribute the fund accordingly. In view of the certainty of such division and the convenience of this method of making it, it seems probable that all ancillary receivers, acting under the direction of the courts appointing them, will forward their funds to the assignee. The case is eminently one that requires the co-operation of all courts which have jurisdiction of any of the funds, in order to attain the object desired by all with the least delay and expense, and the least liability to error. If, however, the funds in any State are withheld for any reason from the assignee, the court here will be obliged to undertake the difficult task of securing indirectly equality in the distribution.²⁰ In that case it will be necessary to ascertain what shareholders receive, or are entitled to receive, dividends in the other States, and the amount of such dividends. If the receiver in any State retains the funds in his possession, and they are sufficient in amount to pay the shareholders who have proved their claims in the State a larger percentage than shareholders generally will be entitled to under the distribution to be made here, such foreign shareholders will not be entitled to any portion of the funds here. For example, if the percentage to which shareholders generally will be entitled proves to be 30, and certain shareholders will receive 35 per cent. from one or more ancillary receivers, they will be entitled to nothing in this proceeding. If they receive only 25 per cent., they will be entitled to receive here an additional 5 per cent. The remarks of the court in a recent English case upon a kindred question are pertinent in this connection.²¹ The court said: 'No doubt, in a case in which French assets were distributed so as to give French creditors as such priority, in distributing the English

²⁰ Citing *Goodall v. Marshall*, 11 N. H. 88, 101, 35 A. D. 472.

²¹ *In re Kloebe*, 28 Ch. Div. 175, 177.

assets the court would be astute to equalize the payments, and take care that no French creditors should come in and receive anything till the English creditors had been paid a proportionate amount. But, subject to that, which is for the purpose of doing what is equal and just to all the creditors, I know of no law under which the English creditors are to be preferred to foreigners.'''²²

²² Chase, J., in *Bank Comrs. v. Granite State Provident Assoc.*, 70 N. H. 557, 49 Atl. 124.

CHAPTER XXXIV.

THE DISSOLUTION OF A FOREIGN CORPORATION.

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| <p>§ 821. A foreign corporation cannot be dissolved.</p> <p>822. Business within the jurisdiction may be wound up.</p> <p>823. Dissolution by State of charter.</p> <p>824. Suit after dissolution.</p> | <p>§ 825. Property after dissolution.</p> <p>826. Suit by or against statutory representatives.</p> <p>827. Incomplete dissolution.</p> <p>828. Extension of power by foreign State.</p> |
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§ 821. A foreign corporation cannot be dissolved.

As we have already seen,¹ no court can declare a forfeiture of franchise or a dissolution of a corporation except the courts of the jurisdiction which created it. A winding-up order, therefore, which purports to forfeit the franchises of a foreign corporation or to dissolve it is to that extent void. And as the phrase "winding-up" commonly involves the idea of dissolution, it is often said that a court cannot wind up a foreign corporation.²

§ 822. Business within the jurisdiction may be wound up.

A winding-up order, however, does not necessarily include a dissolution of the corporation.³ Such an order involves three things:

1. A cessation from active business by the corporation.
2. The appointment of a liquidator.

¹ *Ante*, § 302.

² *Murray v. Vanderbilt*, 39 Barb. (N. Y.) 140. See *Hallenborg v. Greene*, 73 N. Y. S. 403, 66 App. Div. 590; *Dreyfuss v. Seale*, 41 N. Y. S. 875, 18 Misc. 551. And see *Lewis v. Am. Naval Stores Co.*, 119 Fed. 391.

³ *Allen v. Hanson*, 18 Can. 667; *Smith v. St. L. Mut. Life Ins. Co.*, 3 Tenn. Ch. 502.

3. The intervention of the court to prevent one creditor from obtaining by legal proceedings any advantage over another. Now there is no difficulty in the way of doing all this to a foreign corporation so far as its business within that jurisdiction is concerned. So where an appropriate statute is found broad enough in its terms to include a foreign corporation the court will wind up a foreign corporation.⁴ So in England under the Companies Act every corporation, foreign or domestic, which does business in England is subject to a winding-up order, even though it may also be wound up in the State which chartered it.⁵ But a foreign company which has no office and does no business in England (except the mere making of contracts through an agent) cannot there be wound up.⁶

§ 823. Dissolution by State of charter.

The corporation may of course be dissolved by its own State, and such dissolution will be effectual everywhere, even though all its assets are situated and all its business is done abroad.⁷ It is not dissolved by an assignment for the benefit of creditors,⁸ or by insolvency,⁹ or even by the appointment of a receiver.¹⁰ And the legality of an alleged dissolu-

⁴ *Bank Comrs. v. Granite St. Prov. Ass.*, 70 N. H. 557, 49 Atl. 24; *Popper v. Supreme Council*, 61 App. Div. 405, 70 N. Y. S. 637; *Hallenborg v. Greene*, 66 App. Div. 590, 73 N. Y. S. 403; *Smith v. St. L. Mut. Life Ins. Co.*, 3 Tenn. Ch. 502; *Allen v. Hanson*, 18 Can. 667.

⁵ *In re Dendre Valley Ry. v. Canal Co.*, 19 L. J. Ch. 474; *In re Madrid & Valencia Ry.*, 19 L. J. Ch. 260; *In re Commercial Bank of India*, L. R. 6 Eq. 517; *In re Matherson*, 27 Ch. D. 225; *In re Commercial Bank of So. Australia*, 33 Ch. D. 174.

⁶ *In re Lloyd Generale Italiano*, 29 Ch. D. 219.

⁷ *Princess of Reuss v. Bos*, L. R. 5 H. L. 176; *In re Tumacocori Mining Co.*, L. R. 17 Eq. 534; *In re General Company for the Promotion of Land Credit*, L. R. 5 Ch. 363.

⁸ *Barclay v. Talman*, 4 Edw. (N. Y.) 123.

⁹ *Willitts v. Waite*, 25 N. Y. 577.

¹⁰ *Société Foncière v. Milliken*, 135 U. S. 304, 34 L. ed. 208; *Life Assoc. of America v. Fassett*, 102 Ill. 315; *Dunlap v. Paterson F. I. Co.*, 12 Hun (N. Y.), 627 (aff. 74 N. Y. 145); *Sigua Iron Co. v. Brown*, 33 Misc. 50, 68 N. Y. S. 141; *Plummer v. Lake Superior N. C. Co.*, 10 Ont. Pr. R. 527.

tion may be inquired into. Thus where it is alleged that a foreign corporation had been dissolved by a decree of the president without an act of the legislature, his power so to dissolve it is a matter for consideration,¹¹ and where the dissolution is alleged to have been decreed by a court of the State of charter, the jurisdiction of such court to dissolve it must be established.¹² This, being a matter of foreign law, must be established by evidence in the trial court; the jurisdiction cannot be presumed.¹³ "It is not an inevitable inference which the law draws conclusively from the entry of a judgment by a court of general jurisdiction that the court which entered it had jurisdiction of the cause, or to give all the relief which by its decree it purported to give. Nor is there any presumption in Massachusetts that the statutes of New York give power to any court of New York to dissolve a corporation.¹⁴ Therefore the precise question is whether it was an inevitable inference from the agreed facts that the New York court had jurisdiction to decree a dissolution of the corporation on May 4, 1900, and then did make a decree not only purporting to dissolve the construction company, but which in law and fact actually then extinguished totally its life. In our opinion no such inevitable inference is drawn by the law from the facts stated, and therefore neither the lower court, nor this court upon the appeal, was precluded from finding that the judgment entered against the construction company after the date of the decree purporting to dissolve it was a valid judgment." ¹⁵

§ 824. Suit after dissolution.

If a corporation has been legally dissolved by the State of

¹¹ *Lea v. American A. & P. C. Co.*, 3 Abb. Pr. (N. S.) (N. Y.) 1.

¹² *Folger v. Columbian Ins. Co.*, 99 Mass. 267, 96 A. D. 747; *Hammond v. National Life Assoc.*, 31 Misc. 182, 65 N. Y. S. 407.

¹³ *Olds v. City T. S. D. & S. Co.*, 185 Mass. 500, 70 N. E. 1022.

¹⁴ Citing *Kelley v. Kelley*, 161 Mass. 111, 112, 36 N. E. 837, 25 L. R. A. 806, 42 A. S. R. 380.

¹⁵ *Barker, J.*, in *Olds v. City T. S. D. & S. Co.*, *supra*.

charter, so that it is no longer in existence, a judgment obtained against it is of no more effect than a judgment against a dead man. The corporation being dissolved, no person, legal or natural, is bound by the judgment, even if the action was pending at the time of the dissolution.¹⁶ In the case of a deceased natural person, a representative is appointed by a court of probate, and the suit is brought or continued against such representative. There is no power to appoint a representative of a deceased foreign corporation, and if such representative has not been named by the State of charter, a common-law action could not be brought or continued. Yet it is clearly within the power of a State to apply the assets within its jurisdiction to the payment of the debts of the dissolved corporation, and a legal method of doing it could probably be found.

"We are not ready to concede that, after the dissolution of a foreign corporation by the sovereignty by which it was created, its creditors in this State cannot in some way, by proceedings in equity or otherwise, take advantage of the former corporate life, through our own courts, so far as to avail themselves of assets in this State."¹⁷

A creditor's bill in equity making all stockholders of the dissolved corporation parties and serving by publication those who could not be reached personally would probably lie. To this effect was the language of the Supreme Court of Illinois: "But, if it be conceded it is proven this bank has forfeited its franchises under the laws of Rhode Island, the obligation of its contracts survives, and this action may be maintained on the ground it is a proceeding against the property of the bank, not in the hands of a *bona fide* purchaser, to enforce

¹⁶ *Marion Phosphate Co. v. Perry*, 74 Fed. 425, 33 L. R. A. 252; *Fitts v. National Life Assoc.*, 130 Ala. 413, 30 So. 374; *Sturges v. Vanderbilt*, 73 N. Y. 384; *Mechants' L. & T. Co. v. Clair*, 107 N. Y. 663, 114 N. E. 414 (affirming 36 Hun, 362); *In re Stewart*, 39 Misc. 275, 79 N. Y. S. 525.

¹⁷ *Barker, J., in Olds v. City T. S. D. & S. Co.*, 185 Mass. 500, 70 N. E. 1022.

payment.”¹⁸ And this appears to be generally regarded as law, though there is little direct authority on the point.¹⁹

As a corporation cannot be sued after dissolution, it is equally clear that it cannot sue.²⁰

§ 825. Property after dissolution.

It was the notion of the older law that upon the dissolution of a corporation without successor its property either escheated to the State or reverted to the donor. But this doctrine would hardly be applied in modern times to the prejudice of either creditors or stockholders. Whether the modern doctrine is or is not defective in logic, it is based on sufficient common sense; namely, that the property of a deceased corporation is a trust fund for creditors and stockholders, and that in default of a trustee to hold the legal title one will be appointed by the court. This modern doctrine is explicitly stated in a number of statutes;²¹ and while the case is an uncommon one in practice, the courts when the case arises enforce the same doctrine, even in the absence of a statute, in the case of a foreign corporation.²²

This question arose in an action of trespass to try the title to land in Texas. The land had been owned by a Louisiana corporation. The corporation had been dissolved in Louisiana, and three commissioners appointed to administer its affairs; but since no deed was made to them, the title to the Texas

¹⁸ *City Ins. Co. v. Commercial Bank*, 68 Ill. 348; and see *Life Assoc. of America v. Fassett*, 102 Ill. 315.

¹⁹ *Assoc. v. Goode*, 71 Tex. 90, 8 S. W. 639.

²⁰ *Pardee, J., in Marion Phosphate Co. v. Perry*, 74 Fed. 425, 429, 33 L. R. A. 252; *Sharpe, J., in Fitts v. National Life Assoc.*, 130 Ala. 413, 30 So. 374; and see *Hammond v. National Life Assoc.*, 58 App. Div. 625, 69 N. Y. S. 585, affirmed 168 N. Y. 262, 61 N. E. 244.

²¹ Ark. Stat. § 1429; Dist. Colo. Code, § 774; Ga. Code, § 1886; Md. Gen. L. Art. 23, §§ 269, 272; Mont. Civ. Code, § 561; Neb. Comp. Stat. § 1737; N. Y. Gen. Corp. L. § 30; N. Dak. Civ. Code, § 2914; Oh. Rev. Stat. § 5658; Okl. Stat. § 982; Pa. 1872, P. L. p. 46, § 1; Tenn. Code, § 1721; Wash. Corp. Supp. § 26; Wyo. Rev. Stat. § 3260. In Mississippi the legal title to the assets passes to the stockholders on dissolution. Miss. Code, § 847.

²² *Baldwin v. Johnson*, 95 Tex. 85, 65 S. W. 171.

land was not passed to them. The commissioners, who were also stockholders, instituted the suit ; it was held that they could not sue as commissioners, but might maintain the suit as stockholders for themselves and other stockholders. Judge Brown said:

"When the corporation existed, the title to the property was vested in it, and, if a receiver or some officer had been appointed by the court to wind up the affairs of the corporation, the legal title would have vested in such officer in trust for the creditors and the stockholders. But there being no corporation, no receiver, trustee, nor creditor in existence, the trust ceased to exist, and the legal and equitable title united in the stockholders, the only persons who had an interest in the land." ²³

§ 826. Suit by or against statutory representative.

If a dissolved corporation is succeeded, according to the statute of the State of charter, by a representative under the name of trustee or committee, such representative, in place of the corporation, may maintain any personal action in a foreign State.²⁴ And such a representative could doubtless be sued, if service could be had upon him, for the debts of the corporation.²⁵

§ 827. Incomplete dissolution.

What purports to be a decree of dissolution may have a saving clause continuing the corporation in existence for certain purposes.²⁶ Judgment may be obtained against a foreign corporation after such a decree. If it may still be a party to suits at home, it may abroad. So if there is a statute providing that suits by or against the corporation shall not abate, such a statute will be given extra-territorial effect so far as

²³ Baldwin v. Johnson, *supra*.

²⁴ Relfe v. Rundle, 103 U. S. 222, 26 L. ed. 337; Planters' Bank v. Bass, 2 La. Ann. 430; New Jersey P. & L. Bank v. Thorp, 6 Cow. (N. Y.) 46.

²⁵ Relfe v. Rundle, *supra*.

²⁶ Hamilton v. Accessory Transit Co., 26 Barb. (N. Y.) 46.

to allow a suit elsewhere to be prosecuted to final judgment.²⁷ And though by the statute of the State in which suit is brought domestic corporations continue to have the right to sue for five years only after dissolution, a foreign corporation may sue after that time if by the law of the State of charter it may sue indefinitely.²⁸ In order to bar the plaintiff, a foreign corporation, from obtaining judgment, said the Supreme Court of Maine, "it must appear that the corporation is not merely prohibited from the customary exercise of its corporate functions, but is actually extinct. It is not merely a perpetual paralysis but an unqualified dissolution, alone, that can defeat the plaintiff's right to a judgment. It must be considered as having a qualified existence so long as judgments can be rendered for or against it in the courts of that State," that is, the State of charter.²⁹

Conversely, if the corporation has by the law of the State of charter been placed in the hands of a receiver and deprived of the power to sue, it is dissolved *pro tanto* and cannot sue elsewhere.³⁰

§ 828. Extension of power by foreign State.

It may be claimed that a statute permitting a corporation to sue and be sued for a certain time after dissolution applies to a foreign corporation, and that such corporation, though dissolved in its own State, may nevertheless be party to a suit by virtue of the statute. In a few jurisdictions the statute is interpreted as applying to foreign corporations,³¹ though the better view would seem to be that it applies to domestic cor-

²⁷ *Lycoming F. I. Co. v. Langley*, 62 Md. 196; *Michigan State Bank v. Gardner*, 15 Gray (Mass.), 362; *O'Reilly S. & F. Co. v. Greene*, 17 Misc. 302, 18 Misc. 423, 40 N. Y. S. 360, 41 N. Y. S. 1056. *Contra*, *Bank of Gallipolis v. Trimble*, 6 B. Mon. (Ky.) 599.

²⁸ *Dundee M. & T. I. Co. v. Hughes*, 89 Fed. 182.

²⁹ *Hunt v. Columbian Ins. Co.*, 55 Me. 290; and see to the same effect, *Life Assoc. of America v. Fassett*, 102 Ill. 315.

³⁰ *Kirwan Mfg. Co. v. Truxton*, 1 Penn. (Del.) 409, 44 Atl. 427.

³¹ *Stetson v. City Bank*, 2 Oh. St. 167, 12 Oh. St. 577.

porations only.³² If expressly or by interpretation such a statute is passed including foreign corporations in its operation, its application to foreign corporations is constitutional. In such a case Mr. Justice Miller said: "The constitutionality of this act is denied; but no provision of the constitution of Wisconsin or of the United States is pointed out which is opposed to such legislation. It would on the contrary be a strange defect in the legislative power if under such circumstances a State could not frame laws which would enable her citizens to subject the lands of a corporation whose charter had expired to the debts which it owed to her citizens."³³

³² *Marion Phosphate Co. v. Perry*, 74 Fed. 425, 33 L. R. A. 252; *Fitts v. National Life Assoc.*, 130 Ala. 413, 30 So. 374; *Olds v. City T. S. D. & S. Co.*, 185 Mass. 500, 70 N. E. 1022; *Rodgers v. Adriatic Ins. Co.*, 148 N. Y. 34, 42 N. E. 515; *Hammond v. National Life Assoc.*, 69 N. Y. S. 585, 168 N. Y. 262, 61 N. E. 244; *Wamsley v. H. L. Horton & Co.*, 12 App. Div. 312, 42 N. Y. S. 767.

³³ *McGoon v. Scales*, 9 Wall. 23, 19 L. ed. 545.

APPENDIX.

The object of this Appendix is to exhibit in tabular form such information as to the relative merits of the corporation laws of the several States as can be put into so small a compass. A few of the States are omitted from the Table; most of them because they impose a double liability on stockholders, and were therefore not thought to be of especial interest; one or two because, owing to the enormous franchise taxes assessed, they were not believed to be entitled to consideration.

A few remarks may be made upon the Table. Some spaces have been left blank, others filled with a query. These are cases where the statutes seem to leave the question doubtful. The danger of error in such a Table is great, and it should be used not as an authoritative statement of the law, but merely as a guide to State laws which may be deemed worthy of investigation.

Most of the columns need no explanation. The brief statement of the amount of incorporation and franchise tax is necessarily only a rough approximation to the exact amount of the tax. It will be observed that the 17th column, stating the existence or otherwise of a tax on the corporate excess, has the most important bearing on the real amount of taxation imposed on domestic corporations; since a tax, at the current rate, upon the entire valuation of the corporation, including its intangible assets, may be much greater in amount than a franchise tax would be.

In several States there are special provisions for manufacturing and mining companies. These have not usually been tabulated. The provisions for banks, insurance companies, and public-service companies are not given.

APPENDIX.

	1	2	3	4	5	6	7	8
	Purpose.	Limit of duration.	Number of incorporators.	Number resident.	Number resident directors.	Stockholders' meetings outside.	Directors' meetings outside.	Limit of amount of stock.
Alabama	Any	20 y	2	0	0	Y(mfg.)	Y	no more than \$10,000,000
Arizona	Any	25 y	P	0	0	N	Y	N
Arkansas	Any	N	3	0	0	N	Y	N
Colorado	Any	20 y	3	0	0	N	Y	N
Connecticut	Any	N	3	0	0	N	Y	at least \$2000
Delaware	Any	N	3	0	1	Y	Y	at least \$2000
District of Columbia	Any	N	3	0	maj	N	Y	N
Florida	Any	N	3	0	0	N	Y	N
Georgia	Any	20 y	P	0	0	N	Y	N
Hawaii	Any	N	P	0	0	N	Y	N
Idaho	Any	50 y	5	1	maj	N	N	N
Illinois	Any	99 y	3 to 7	0	0	N	Y	N
Iowa	Any	20 y	1	0	0	N	Y	N
Louisiana	Any	99 y	3	0	0	N	N	\$5000 to \$1,000,000 (mfg.)
Maine	Any	N	3	0	0	N	Y	at least \$1000
Maryland	Spec.	40 y	5	maj	maj	N	Y	N
Massachusetts	Bus.	N	3	0	0	N	Y	at least \$1000
Michigan	Any	30 y	3	0	0	Y	Y	\$1000 to \$25,000,000
Mississippi	Any	50 y	P	0	0	N	Y	no more than \$1,000,000
Missouri	Any	50 y	3	0	3	N	Y	\$2000 to \$10,000,000

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9 Amounts subscribed before doing business.	10 Amount paid in be- fore doing business.	11 Payment for stock in property or services.	12 Preferred stock authorized.	13 Names stockholders disclosed.	14 Stockholders' liability.	15 Debt limit.	16 Incorporation tax.	17 Franchise tax.	18 Tax on corporate excess.	19 Tax on absent chattels.
50	$\frac{1}{2}$ sub.	Y	Y	N	S	Y	\$25 to 250	$\frac{1}{16}$ of 1% or less	Y	N
N	N	Y	N	S	H	Y	\$10	N	N	N
N	N	N	N	N	S:W	Y	\$25	N	N	N
N	N	B	N	C	S	N	about $\frac{1}{16}$ of 1%	2c on \$1000	Y	N
N	at least \$1000	B	Y	C	H	N	50c. per \$1000	N	N	N
N	at least \$1000	B	Y		H	A	15c. per \$1000	$\frac{1}{16}$ of 1% or less	N	N
N	N		N	C	H		N	N	Y	N
10%	10%	Y	N	J	S	Y	\$2 per \$1000	N	Y?	N
10%	10%	Y	Y	C	H	N	\$5	N	N	N
75%	A	N	N	C	H	Y	N	N	Y	N
N	N	Y	N	C	H	N	\$5 to \$25	N	N?	N
N	N		N	S	H	Y	\$1 per \$1000	N	Y	N
N	N		N		H:W	Y	\$25 and \$1 per \$1000	N	Y	N?
N	N	Y	N		H	N	N	N	Y	N?
N	N	B	Y	C	S	N	\$25 and \$1 per \$1000	$\frac{1}{16}$ to $\frac{1}{100}$ of 1%	N	N
N	in 4 years	Y	Y	C	S	N	$\frac{1}{2}$ of 1%	N	Y	N
N	A	Y	Y	S	S:W:L	Y	$\frac{1}{16}$ of 1%	N	Y	N
50%	\$1000 & 10%		Y		S:W:L	N	$\frac{1}{16}$ of 1%	N	Y	N
N	A		Y		S:H	Y mfg.	$\frac{1}{16}$ of 1%	N	Y	N
All	$\frac{1}{2}$	$\frac{1}{2}$ cash	Y	S	H	Y	\$5 per \$10,000	N	Y	Y?

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Montana	Spec.	20 y	3	0	0	N	Y	N
Nebraska	Any	N	P	0	0	N	Y	N
Nevada	Any	N	3	0	0	Y	Y	at least \$2000
New Hampshire	Any	N	5	0	0	N	Y	\$1000 to \$1,000,000
New Jersey	Any	N	3	0	1	N	Y	at least \$2000
New Mexico	Any	50 y	3	0	$\frac{1}{2}$	Y	Y	N
New York	Any	N	3	1	2	N	N?	at least \$500
North Carolina	Any	N	3	0	1	N	Y	N
North Dakota	Any	N	3	$\frac{1}{2}$	1	N	Y	N
Oklahoma	Spec.	N	3	$\frac{1}{2}$	$\frac{1}{2}$	N	Y	N
Oregon	Any	N	3	0	maj	N	Y	N
Pennsylvania	Spec.	N	3	1	$\frac{1}{2}$	Y	Y	N
Rhode Island	Any	N	3	0	0	N	Y	N
South Carolina	Any	N	2	0	0	N	Y	N
South Dakota	Any	N	3	$\frac{1}{2}$	0	N?	Y?	N
Tennessee	Spec.	N	5	0	0	N	Y	N
Utah	Any	100y	5	1	1	N	Y	N
Vermont	Any	N	5	0	2	N	Y	\$500 to \$11,000,000
Virginia	Any	N	3	0	0	N	Y	N
Washington	Any	50 y	2	0	1	N	Y	N
West Virginia	Any	50 y	5	0	0	Y	Y	N
Wisconsin	Spec.	N	3	all	0	N	Y	N
Wyoming	Any	50 y	3	0	0	N	Y	N
Great Britain	Any	N	7	0	0	?	Y	N
New Brunswick	Any	N	5	0	0	?	Y	not less than \$2000
Nova Scotia	Any	N	3	0	0	?	Y	N
Ontario	Any	N	5	0	0	?	Y	N

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N	N	Y	N	C	H		25c. or less per \$1000	N	Y	N?
N	N		N		H	Y	10c. per \$1000	N	Y	N
\$1000	N	B	Y	C	H		15c. per \$1000	N	N?	N
N	N		Y	C	W:P	Y	\$10 to \$200	N	N?	Y?
N	at least \$1000	B	Y	S	H	N	20c. per \$1000	$\frac{1}{16}$ of 1%	N	Y?
N	N		N	C	S	Y	10c. per \$1000	N	Y?	N
N	A	B	Y	J	H:L		$\frac{1}{16}$ of 1%	$\frac{1}{16}$ mill per c. on pro. in St.	Y	N
N	A	B	Y		H	N	20c. per \$1000	about $\frac{1}{16}$ of 1%	Y	N
N	N	Y	N	C	H	Y	\$5 per \$1000	N	Y	Y
N	N		N	C	H	Y	\$5	N	?	Y
N	N		N	C	H	N	\$10 to \$100	$\frac{1}{16}$ to $\frac{1}{16}$ of 1%	Y	N?
N	10%	Y	Y	N	S:W:L	Y	$\frac{1}{16}$ of 1%	N	Y	N
N	N		Y		S	Y	$\frac{1}{16}$ of 1%	N	N	N
50%	20%	Y	Y	S	H	A	$\frac{1}{16}$ of 1% or less	N	Y	N
N	N	Y	N	C	H	Y	\$10	N	Y	N
N	N		N		S:L	N	$\frac{1}{16}$ of 1%	N	Y	N
N	10%E		N	S	H	N	25c. per \$1000	N	Y	N
N	$\frac{1}{2}$		N	S	H:W	Y	\$10 to \$500	\$50 or less	N	N
N	N	B	Y		S	N	\$15 to \$600	\$5 to \$25	Y	N
N	N		N	C	S	N	\$10	N	Y	N
N	10%E	B	Y	S	H	N	\$4	$\frac{1}{16}$ to $\frac{1}{16}$ of 1%	Y	N?
$\frac{1}{2}$	20%	Y	Y	C	H:W:L	Y	\$1 per \$1000	N	Y	N
N	N	Y	Y		H	Y	5c. per \$1000	N	Y	N
A	A		N		S		N	N	Y	N
$\frac{1}{2}$ or \$2000	N		N		S			N	Y	Y
N	N		N	C	S		N	N	N	Y
N	N	Y		C	H			N	N?	Y?

APPENDIX.

EXPLANATION OF THE TABLES.

Y INDICATES YES: N, NO, OR NONE.

- | | |
|---------------|---|
| Column | 1. In a few States corporations can be formed only for certain specified purposes. This is indicated. In Massachusetts the provisions for business corporations only are given. |
| Column | 2. In many cases where a limited term only is allowed the existence of the corporation may be renewed. |
| Column | 3. P means that no number is given in the statute, but the plural number being used two incorporators would probably be required. |
| Column | 6. The negative is stated (as required by the common-law) unless there is an express provision otherwise. |
| Column | 7. The affirmative is stated (as permitted by the common-law) unless there is an express provision otherwise. |
| Columns 9-10. | A means that the amount must be fixed by the Articles of Incorporation.
E means that the percentage must be paid in upon each share of stock. |
| Column | 11. Y means that the statutes contemplate issuing stock for property or services.
B means that property or services may be accepted in payment for stock at a rate fixed by the directors, and that the stock so issued is for all purposes fully paid-up stock in the hands of an innocent purchaser.
A blank means that there is no statutory provision on the subject. |

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- Column 12. N means that there is no statutory provision for preferred stock. In most of the States so marked the power of issuing preferred stock independently of statutory authority is claimed.
- Column 13. C means that creditors have access to the stock-book.
J means that judgment creditors or their representatives have such access.
S means that stockholders have such access.
- Column 14. H means that each stockholder is liable to the extent of the amount unpaid on his stock, whether he is the original subscriber or a transferee.
S means that each original subscriber is liable (as at common-law) for any unpaid balance of his subscription.
W means that the stockholders are liable for capital withdrawn and distributed.
L means that the stockholders are liable for the wages of laborers.
S-H means that the stockholders are liable for an unpaid balance on their stock upon any debt created during their ownership.
P means that the stockholders are liable for all debts until the entire capital is paid in and a certificate of that fact filed.
- Column 15. A means that a limit must be fixed in the Articles of Incorporation.

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